PREM 19/1815

617

MT

PART 21

SECRET

Confidential Filing.

The Situation in Northern Ireland.

Force Levels.

IRELAND.

Pt 1: May 1979

Part 21: July 1986

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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PREM 19/1815

PART 21 ends:-

H.O TO NLW 31.10.86

PART 22 begins:-

SS/HOME TO SS/NIO 3.11.86

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC (86) 26th meeting, item 4	03/07/1986
CC (86) 27th meeting, item 4	10/07/1986
CC (86) 28th meeting, item 5	17/07/1986
CC (86) 31st meeting, item 3	18/09/1986

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed _____ Date 10/2/2016

PREM Records Team

PERSONAL

Cf file DA

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

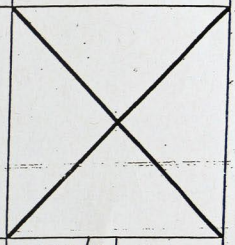
The Prime Minister discussed with you this morning the possibility of an interdepartmental leak investigation of the source of the stories about the Lord Chancellor's alleged opposition to three man courts in Northern Ireland.

It was agreed that you should do no more at this stage than ask Sir Robert Andrew whether he knew of the source of the leak. You will no doubt let the Prime Minister know the results of your enquiry.

(N.L. WICKS)

31 October 1986

The National Archives

DEPARTMENT/SERIES PREM 19 PIECE/ITEM 1615 (one piece/item number)	Date and sign
Extract details: Letter from Boys Smith to Wicks dated 31 October 1986	
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Instructions for completion of Dummy Card

Use black or blue pen to complete form.

Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

If closed under the FOI Act, enter the FOI exemption numbers applying to the closure, eg. 27(1), 40(2).

Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer or Number not used.

SECRET

From: THE PRIVATE SECRETARY

28

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

John Howe Esq
Private Secretary to
The Rt Hon George Younger MP
Ministry of Defence
Main Building
WHITEHALL
London
SW1

CDP
31/X

31st October 1986

Dear John,

ADDITIONAL RE ASSISTANCE IN NORTHERN IRELAND

Your Secretary of State wrote to mine on 2 October about force levels in Northern Ireland, Royal Engineer assistance to the police building programme, and the Prison Guard Force (PGF).

The question of force levels is being pursued separately, but I am writing now to confirm the message passed to you at official level some days ago that Mr King is grateful for Mr Younger's offer of a single RE squadron for 1 roulement tour starting in early spring 1987, and wishes to accept it. He would of course have preferred more, and our problems are likely to increase with the murder a week ago of a member of staff of one of our key contractors; but he recognises Mr Younger's difficulties, and is in any case urgently exploring other avenues.

As to the PGF, my Secretary of State is sorry that we have so far been unable to reach a settlement convenient to both sides. He does however feel that the main problem is the protection of the Maze prison from armed external attack or armed internal breakout. This is primarily a military task, and though he accepts that it is not an ideal use of soldiers, it would be still more inappropriate, less effective and a much weaker deterrent were it to fall to police or prison officers. While my Secretary of State readily accepts that it is possible to reduce the Military Manpower Bill substantially from the present 130 or so, he sees no reasonable prospect of bringing the figure down to the 30 men which your Secretary of State has in mind.

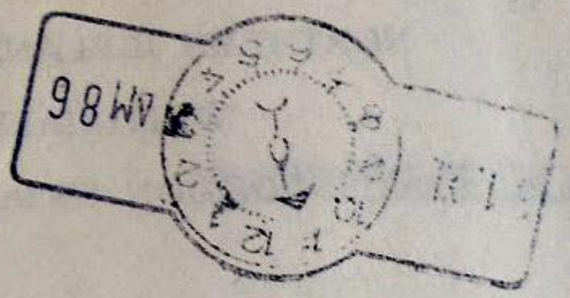
I am sending copies of this letter to the Private Secretaries to the Prime Minister, Foreign Secretary, Home Secretary, and Sir Robert Armstrong.

Yours sincerely
Neil Ward

N D Ward

SECRET

IRELAND Situation PT21



LORD CHANCELLOR

HOUSE OF LORDS,
SW1A 0PW

Prime Minister
CDP
31/x.

The Rt Hon Margaret Thatcher MP
Prime Minister
No 10 Downing Street
LONDON
SW1

30 October 1986

My dear Margaret: Civil Juries in Northern Ireland

I intend to promote an Order in Council in the near future which will amend the court procedure in personal injury actions in the High Court in Northern Ireland so as to remove the right to jury trial. This will bring Northern Ireland into line with England and Wales but is likely to provoke some controversy, probably inspired by the legal profession and the trade unions, both of whom have a vested interest. I am currently seeking the views of the Secretary of State for Northern Ireland (copy memorandum attached) and this is simply to keep you informed.

Yrs:

HOUSE OF LORDS,
SW1A 0PW

30 October 1986

Secretary of State for Northern Ireland

THE USE OF JURIES IN PERSONAL INJURY ACTIONS IN NORTHERN IRELAND

1. I have now completed the review announced on 15 November 1985 and have concluded that legislation should be promoted to abolish the use of juries in personal injury actions in Northern Ireland. The purpose of this memorandum is to ensure that you have no objection to this course of action.

2. The announcement of my decision will no doubt promote some controversy, inspired by the traditional opponents of a change - the Bar, the Law Society and the Trade Unions. The judges, who previously fell into this group have now withdrawn their opposition and it is also interesting to note that the Republic of Ireland - whose position was quoted by the Bar in 1981 as one reason against change in Northern Ireland - is currently legislating to abolish juries in these types of actions.

3. The composition of the group in favour of a change is also fairly predictable; it included the insurers, employers, accountants, and the Consumer Council.

4. The pressure for change has always arisen from the belief that the removal of juries will result in lower awards and reduced legal costs. This will, it has been suggested, result in lower premiums for public and industrial liability insurance. The insurance industry, while apparently encouraging this belief, is careful in its comments. They say -

> "It might well be that the general scale of awards in Northern Ireland would remain above that applying in Great Britain and that would continue to be reflected in the level of premiums. However it is felt that abolition would provide, in the longer term, the benefits of greater certainty and quicker settlement of plaintiffs' claims. It would also lead to substantial cost savings for all parties."

-

HOUSE OF LORDS,
SW1A 0PW

5. I have no doubt that following abolition of juries, the judges would not be inclined to initiate much lower awards. However, I believe that awards made by judges sitting alone should result in more consistent and predictable awards, which would lead inevitably to earlier settlements and lower costs.

6. Abolition would lead to a number of resource savings - the time spent by a judge four days each week swearing in juries for sittings which very often do not take place; the use of courtrooms used for this purpose; staff time; and the cost of summoning jurors and paying their expenses. It has been calculated that this would lead to savings in the region of £70,000 per year in addition to making a judge and courtroom available for other business on one or two days per week.

7. It is likely that initially these savings would be counterbalanced by an increase in the number of contests which would almost inevitably arise as the new system is tested by the legal profession, but I expect that this would soon settle down as a pattern of awards emerged.

8. Once my decision has been made public it will be a matter of promoting the Order in Council required by section 62(7) of the Judicature (Northern Ireland) Act 1978. This would have to be approved in draft by resolution of each House of Parliament.

9. I look forward to hearing your views and am also copying this memorandum to the Attorney General and the Secretary of State for Scotland so that they can comment if they wish. I am also informing the Prime Minister in view of the controversy which may arise.

H: of S: M.
30 Oct 86

From: THE PRIVATE SECRETARY

CF.
Route this
+ file this
letter

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

30 October 1987

Dear Nigel,

I attach the papers on the Lord Chancellor's safety. No copies have been taken here.

I will report further when I hear of the considered views of the Met Police

avant de effet à des articles.

Mon,

Stéphane B. S.

PERSONAL

PP's

Ref. A086/3085

MR WICKS

Thank you for your minute of 29 October about the stories ATTACHED about the Lord Chancellor's alleged opposition to three-man courts in Northern Ireland.

2. These articles must be based on information from some one who has been reasonably close to the recent Ministerial discussions of this matter. They have taken curiously long to surface, since the Ministerial discussion to which they relate took place nearly four weeks ago. It is not clear that the stories are based on a sight of documents: they read more like an oral briefing.

3. I take a serious view of this leak, and I have no doubt that it should be investigated. I am setting up an interdepartmental leak investigation, since the information couldhave come from any of several Departments. I should be grateful for the Prime Minister's authority to include Ministers in the investigation.

RA

ROBERT ARMSTRONG

30 October 1986

PERSONAL

FROM: PRIVATE AND PERSONAL

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
LONDON SW1A 0PW

29 October 1986

The Right Honourable The Prime Minister
10 Downing Street
LONDON
SW1

My dear Margaret:

Security

I attach 4 cuttings from today's heavy newspapers about our collective decision on 3 judge courts.

At first I was disposed to think that this must have come from a lobby briefing, but my office are disposed to think that the most likely source is someone in the Northern Ireland Office. I make no judgment on this except to say that the lobby can hardly be the primary source since the Independent carries somewhat similar material. I hope you realise that I am not unduly concerned about my personal safety. But I have been for years what is called, I believe, a Prime Target, especially since I accepted responsibility for the Northern Irish Courts. I have never asked for personal protection and do not want it now, except, when I visit the Province, when I always get it. My family connection with Ulster is well known across the water.

But I would like you to find out, if you can, who was guilty of this indiscretion, and if you do find out I ask for no redress except that the offender whoever he may be (and I do not ask to know) should be told from me that by his indiscretion or disloyalty, or both, he has placed the life of the Lord Chancellor directly in jeopardy.

Yrs.

Q.

Hailsham opposition to Diplock trial reform

By Colin Brown
Political Correspondent

REFORM OF the controversial Diplock Courts in Northern Ireland has been blocked by Lord Hailsham, the Lord Chancellor, causing more political problems for Garret FitzGerald, the Irish Prime Minister.

Northern Ireland ministers had supported the proposal to replace the Diplock court system, where a judge sits without a jury, with a bench of three judges to hear each case.

But Lord Hailsham, who earlier blocked more radical reforms, has again rejected the idea as an unacceptable precedent for the British legal system.

The Prime Minister has given her support for his advice and the proposal is now regarded as off the agenda until after the general election.

Ministers from the Republic will be disappointed at the rejection of the idea which they hoped would help them to secure support in the Dail, the Irish parliament, to approve an EEC treaty simplifying the extradition of alleged terrorists, including members of the IRA.

The Irish government had originally insisted that there was a link between the ratification of the treaty, due shortly, and the reform of the courts in Northern Ireland. But Irish ministers were persuaded to drop that link in the talks under the Anglo-Irish agreement.

The failure of the Thatcher Government to deliver any fundamental reforms on the Diplock courts will create further difficulties for the Taoiseach, whose government narrowly survived a censure motion in the Dail last week over the Anglo-Irish Agreement.

Dr FitzGerald's ministers were hoping that the reform of the Diplock Courts could be used as hard evidence that the Anglo-Irish Agreement was producing concrete improvements for the advantages for the South.

Some Northern Ireland ministers also saw a propaganda advantage in reforming the courts.

Despite advances in the extradition of suspected terrorists by courts in the United States, the Diplock system is still seen as unjust by many Americans.

Lord Hailsham with support from some senior figures in the Northern Ireland judiciary, has strongly argued that three judges already hear cases on appeal from the Diplock system, but to extend the three-judge principle to the lower courts would be against all precedent.

One disadvantage with the proposal was that it might allow a judge to enter a minority verdict opposing his two colleagues, this would be used for propaganda purposes in Ulster. It would also require the creation of new judges and many barristers might be reluctant to serve.

The Lord Chancellor's opposition within the Cabinet persuaded ministers to drop the idea. This is the second time he has blocked reform. Earlier, he opposed a more radical proposal for judges from the South to sit in on cases in the North.

The next Anglo-Irish meeting of ministers will concentrate on improving cross-border security by improving collaboration between the Garda and the Irish police. This could involve training some Irish police in Garda police methods, in this country unless this proves too sensitive.

The Northern Ireland Office is preparing an order for the next session of Parliament to carry out three reforms on public order — a change to the Flags and Emblems Act to bring the Tricolour on to the same legal footing as the Union Jack; and the introduction of a new offence for action likely to create religious hatred and a requirement for organisers to notify the police in advance of all marches, including for the first time, the traditional Orange marches.

THE INDEPENDENT
40 CITY ROAD,LONDON EC1Y 2DB
(telephone 01-253 1222; telex 9419611 INDPNT)

Time for new court system in Ulster

LORD HAILSHAM, the Lord Chancellor, is, we report elsewhere, as determined as ever to cling to the system of Diplock courts in Northern Ireland. Wrongly so. These special courts were introduced 12 years ago to deal with the genuine and substantial problem of intimidation of jurors in terrorist cases.

Lord Diplock resolved the problem with an elegant simplicity. He replaced 12 good men and true by one, judge.

Today, however, the Diplock courts have, themselves, become a symbol of all that is perceived to be wrong with the administration of justice in the Province.

Why, Republicans ask, should the six counties be offered a system of justice no Englishman would tolerate?

However unfairly, that query carries more clout in Europe, in the United States and in the Irish Republic than does the equally automatic reply — that few jurors will convict if the price is the possibility of a bullet in the back while out doing the weekend shopping. Yet, as the judicial system has become steadily less biased in favour of the "Loyalists", so the courts have attracted less, knee-jerk support from the majority community. Meanwhile, in the Irish Republic, the existence of single-judge courts has made it more difficult for the Government to sell the Anglo-Irish Agreement to its own, restive, electorate. Unless the courts are modified, the Irish Government has warned Mrs Thatcher it will be impossible to force an extradition Bill through the Dail.

But, however reluctantly, few — not Dublin, not the democratic Nationalists, nor yet the constitutional Loyalists — seek a return to jury trials as yet. They dare not. The fear of renewed intimidation is too strong. The demands are for three judges to replace the present one, that new judicial appointments be used to replace the overwhelming domination of Protestant judges and that non-terrorist cases, now embraced by Diplock, be taken back into normal jurisdiction. They are reasonable, interim reforms which should be embrace against the day when jury trials can be resumed.

The Times 29th Oct.

Hailsham blocks Irish move

By Nicholas Wood
Political Reporter

Lord Hailsham of St Marylebone, the Lord Chancellor, is blocking a move by Dublin to replace the one-judge Diplock courts with three-man tribunals, it was disclosed yesterday.

The proposal, to be tabled at the meeting of the Anglo-Irish conference next month, is regarded favourably by the Northern Ireland ministers, Mr Tom King, Secretary of State and Mr Nicholas Scott, his deputy.

They see merit in the Irish case that broadening the composition of the courts, which hear terrorist trials in Ulster without a jury, would strengthen their reputation abroad and defuse the charge that they are unfair and discriminate against the Roman Catholic minority.

Dr Garret FitzGerald, the Irish prime minister, who gained the right to make representations to London about the administration of the province under the Anglo-Irish agreement signed last year, is pressing for re-constituting the courts.

But Lord Hailsham believes the proposal amounts to interference in British sovereignty and is resisting it strongly. The Prime Minister is said to be in no mood to overrule him.

Under Diplock, judges have to publish the reasoning behind their verdicts and the Irish move would extend this arrangement to the three-man courts.

The Lord Chancellor is worried about what would happen in the event of a split decision.● Diplock courts were set up in 1973 by Parliament to hear terrorist cases on the recommendation of a commission chaired by Lord Diplock. Juries were abolished for fear of intimidation.

The Guardian 29th Oct.

Thatcher refuses support for ministers and Dublin

Hailsham blocks reform plan for Diplock courts

By James Naughtie,
Chief Political Correspondent

Changes in the Diplock court system of one judge and no jury in Northern Ireland are being blocked by Lord Hailsham, the Lord Chancellor, against the wishes of senior Cabinet colleagues.

Mr Tom King, the Northern Ireland Secretary, Sir Geoffrey Howe, Foreign Secretary, and Sir Michael Havers, Attorney-General, support reform as part of Britain's effort to improve the administration of justice under the Anglo-Irish agreement.

Lord Hailsham's refusal to contemplate change means that the Prime Minister has decided for the moment to resist requests from Dublin and from her own Northern Ireland ministers.

The Irish Government will go ahead, probably next week, with its legislation to ratify its accession to the European convention on terrorism but Dr Garret FitzGerald, the Taioseach, has told Mrs Thatcher that the passage of legislation through the Dail will be made much more difficult by Britain's refusal to deal with the problem of the Diplock courts.

Dublin favours a three-judge bench for cases now dealt with by a single judge, sitting without a jury.

Britain's practical arguments against a change have rested on the difficulty of recruiting enough judges — given the tense security background — and the difficulties posed by the possibility of split verdicts from a three-judge bench. However, it is clear from ministers involved that there is now a consensus for change which is being blocked by Lord Hailsham.

The Lord Chancellor's objections appear to be regarded by Mr Thatcher as an insuperable obstacle. It is likely that she will oppose reform as long as he sits on the Woolsack.

Dr FitzGerald, who faces a difficult situation in the Dail and a daunting election within four months or so, is making it clear that some movement on the British Government's part would be immensely helpful. For the moment, however, he is likely to be disappointed.

Those who favour reform of Diplock are now reconciled to trying to produce other changes in the administration of justice to assist the progress of the Anglo-Irish agreement one year old on November 15 while Lord Hailsham remains in office.

to hook pressure

Daily Telegraph 29th Oct.

able time

Hailsham bars calls to end Diplock trials

By Our Political Correspondent

LORD HAILSHAM, the Lord Chancellor, is blocking demands by the Irish Government for the ending of the Diplock courts, where a judge sitting alone without a jury tries terrorist cases, in Northern Ireland.

The administration of justice in Ulster will head the agenda at the next full meeting of the Anglo-Irish Conference next month.

Dublin is expected to step up its demands for terrorist cases in the North to be tried by a panel of three judges.

Irish ministers argue that this would increase the confidence of the minority Roman Catholic community in the courts, and make terrorist trials more acceptable to international opinion.

Strong line

However, Lord Hailsham is understood to be taking a strong line against what he regards as the Republic's interference in the judicial processes in the North.

He is also worried about finding sufficient judges for such courts in the North, and by the prospect of split judgments in terrorist trials.

Class winner

PERSONAL

Pile
(91)

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I attach a copy of a letter which the Prime Minister received today from the Lord Chancellor in which he in effect asks for an investigation to be made of the source of the story in today's newspapers about his alleged opposition to reform of certain aspects of the Court system in Northern Ireland. The offending newspaper articles are attached to the Lord Chancellor's letter. I shall be showing the letter to the Prime Minister overnight, but I should be grateful if you could meanwhile be giving some consideration to the action which the Lord Chancellor seeks.

I have already spoken to Stephen Boys Smith, to whom I am sending a copy of this minute, about the Lord Chancellor's security. I have asked that he should carry out a very urgent check to see whether the articles put the Lord Chancellor's safety in jeopardy and if so to take appropriate action. I should be glad if he could let me know the results.

N L WICKS

29 October 1986

PERSONAL

CONFIDENTIAL

CABINET OFFICE
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel No: 233 3299
7471

29 October 1986

The Rt Hon Tom King MP
Secretary of State for Northern Ireland
Northern Ireland Office
Whitehall
LONDON
SW1A 2AZ

Dear Tom

Thank you for copying to me your letter of 16 October to Douglas Hurd. I have also seen Geoffrey Howe's reply of 24 October.

It is clearly potentially most awkward that the issue of the repeal of the Flags and Emblems Act should have acquired a disproportionate political significance within Northern Ireland, for both communities.

You have made it clear publicly that the public order review will look at this issue. The only realistic interpretation to be put on that is that you will do so with a view to the repeal of these provisions. That has been seized upon by the nationalist community and others, and is being used to play upon the fears of loyalists.

I have looked carefully at paragraphs 8 to 11 of the draft explanatory document. What it says is an entirely reasonable interpretation of the position. But it is unconvincing in the conclusion drawn. It is not a strong argument to assert that the law on the display of flags and emblems in Northern Ireland should be put onto the same basis as in the rest of the United Kingdom, when the political circumstances concerning the display of flags etc in Northern Ireland is so transparently different from that in Great Britain.

Nor will it necessarily help to say that the presence of the Act is regarded as offensive and discriminatory, and that it should therefore be removed. That is precisely the kind of concession to nationalist opinion upon which loyalist objections to the Agreement thrive. Leaving aside the ample scope for misinterpretation which, as you rightly say, they will exploit to the full, they might reasonably ask: what is the genuine mischief which this Act

perpetuates, and which causes it to have to be repealed? Is it really offensive to have explicit statutory protection for the display of the Union flag under certain circumstances?

I accept that there are reasonable answers to these questions, and others, but I wonder if the answers will be as clearly heard as the questions. I am not persuaded by the view that, in order to avoid appearing to ignore the views of the Unionists solicited by the Explanatory Document, it would be better not to have their views at all. We will not avoid Unionist hostility this way.

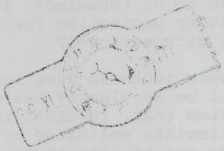
I should be happier to see the proposal couched more neutrally, so that the possible text of the Order and its implications are set out, but no strong preference as to action is expressed. We can then, in the course of the period of consultation, assess the strength of our case for proceeding with the repeal.

I am sending a copy of this letter to the Prime Minister, Lord President, the Foreign Secretary, the Home Secretary, the Chief Whip and to Sir Robert Armstrong.

Yours

NORMAN TEBBIT

IRELAND
SITUATION
PT21



FCS/86/247

SECRETARY OF STATE FOR NORTHERN IRELAND

Public Order Legislation

1. Thank you for sending me a copy of your letter of 16 October to the Home Secretary.

2. I welcome the thrust of the intended legislation. The improvements of the law to prevent incitement to hatred on grounds of religious opinion and the repeal of the Flags and Emblems (Display) Act 1954 would be particularly welcome, and should be seen as further steps towards fulfilling our commitment to a just and even-handed society in Northern Ireland.

3. I must however admit to some doubt about the tactics you have in mind for handling the repeal of the Flags and Emblems Act. This is, as you point out, an almost entirely obsolete and empty piece of legislation. But it gives an illusory appearance

/of

of protection to the union flag and as such is seen by the minority community as discriminatory. It has a correspondingly symbolic importance for the unionists. Their anger at the repeal of the Act would be heightened if, having sought their views, you were to ignore them. On the other hand, if you decided not to proceed it would be interpreted by the nationalists and the Irish Government as a climb-down in the face of unionist hostility. I wonder, therefore, whether your proposal for public consultation on this issue may not give us more trouble than straightforward publication of the draft Order without any qualification.

4. If further consultation is really necessary (and I must say that I doubt whether it is), I hope that you will make clear your firm intention to proceed with the repeal of the Act on the grounds that it is unnecessary; and that its repeal would in no way affect the flying of the Union flag, but would simply put the situation on a par with that in the rest of the United Kingdom. If you agree with this, it would mean some strengthening of the language in the relevant section of the explanatory document.

/5.

5. I agree with what you say about timing. It will be necessary for our Departments to keep closely in touch on this as matters go forward.

6. I am sending copies of this letter to the Prime Minister, the Home Secretary, the Lord President, the Chancellor of the Duchy of Lancaster, the Chief Whip and Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

24 October 1986

IRELAND Situation P121

RLE

CONFIDENTIAL

DA

cc PC

10 DOWNING STREET

From the Private Secretary LONDON SW1A 2AA 20 October 1986

Dear David,

PUBLIC ORDER LEGISLATION

The Prime Minister has seen the Northern Ireland Secretary's minute of 16 October putting forward his proposals for amending public order legislation in Northern Ireland. She has expressed some doubt whether it would be right to leave decisions about the conditions to be imposed on potentially controversial processions to an independent tribunal. She accepts that it is envisaged that such a tribunal should only have a "role" in such decisions. But once the tribunal had expressed a view it would very considerably restrict the Government's freedom of action.

I am sending copies of this letter to the Private Secretaries to the Lord President, Foreign and Commonwealth Secretary, Home Secretary, Chancellor of the Duchy of Lancaster, Chief Whip and Sir Robert Armstrong.

Yours sincerely,

(Charles Powell)

David Watkins, Esq.,
Northern Ireland Office.

SECRET AND PERSONAL - CMO

FILE

DA

cc PC

21

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

20 October 1986

Dear John,

MACM: NORTHERN IRELAND CONTINGENCY PLANNING

The Prime Minister has seen a copy of the Defence Secretary's minute of 16 October about contingency planning against the possibility of politically motivated industrial action in Northern Ireland, and in particular the possibility of taking over by force the electricity services.

The Prime Minister agrees that this should be considered by a very restricted circle of Ministers only. Her preliminary view is that the chances of military intervention being carried out successfully are so slender, and the downside risk so high, that the conclusion is likely to be not to pursue the matter further. But she would like to hear the views of colleagues concerned once a discussion has taken place.

I am sending copies of this letter to the Private Secretaries to the Lord President, the Foreign and Commonwealth Secretary, the Northern Ireland Secretary and to Sir Robert Armstrong.

Yours sincerely,

Charles Powell

(C.D. Powell)

John Howe, Esq.,
Ministry of Defence.

SECRET AND PERSONAL - CMO

DESKBY 171730Z 19

PS/13 PS/NO 10 D.S. 25

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NORTHERN IRELAND

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RESIDENT CLERK

MR STARK, CABINET OFFICE
MR BELL, NIO(L)

PS/S of S NORTHERN IRELAND OFFICE

20.1.86

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TELNO 530
OF 171620Z OCTOBER 86
INFO IMMEDIATE NIO(B)

IRISH RATIFICATION OF THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

SUMMARY

1. THE IRISH CABINET HAVE DEFERRED UNTIL 21 OCTOBER CONSIDERATION OF A LETTER TO THE PRIME MINISTER ABOUT THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND.

DETAIL

2. I CALLED ON O TUATHAIL ON 17 OCTOBER. HE SHOWED ME THE THIRD DRAFT OF A LETTER FROM DR FITZGERALD TO MRS THATCHER IN REPLY TO HER LETTER OF 3 OCTOBER. THIS DRAFT HAD BEEN SUBMITTED TO THE IRISH CABINET ON 16 OCTOBER. IT BEGAN WITH AN ASSURANCE OF THE DETERMINATION OF THE IRISH GOVERNMENT TO PUT BEFORE THE DAIL A BILL FOR THE RATIFICATION OF IRISH ACCESSION TO THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM. THE REMAINDER OF THE DRAFT AS WE HAVE PREVIOUSLY FORECAST WAS ABOUT THE DIFFICULTIES WHICH THEY FACED IN PURSUING THIS INTENTION WITHOUT A COMMITMENT BY HMG TO THE INTRODUCTION OF THREE JUDGE COURTS. IT STRESSED THE PROBLEMS THEY FACED IN THE DAIL. IT MADE IT CLEAR THAT THEY DID NOT CONSIDER THAT THE MEASURES SET OUT IN THE PRIME MINISTER'S LETTER WOULD BE SUFFICIENT TO CARRY A MAJORITY OF THE DAIL. IT CONCLUDED WITH A SENTENCE TO THE EFFECT THAT THEY BELIEVED IT ESSENTIAL THAT THE TWO GOVERNMENTS SHOULD AGREE ON MEASURES WHICH WOULD GIVE SUBSTANTIAL EXPRESSION TO THE AIM OF

MINISTER'S LETTER WOULD BE SUFFICIENT TO CARRY A MAJORITY OF THE DAIL. IT CONCLUDED WITH A SENTENCE TO THE EFFECT THAT THEY BELIEVED IT ESSENTIAL THAT THE TWO GOVERNMENTS SHOULD AGREE ON MEASURES WHICH WOULD GIVE SUBSTANTIAL EXPRESSION TO THE AIM OF INCREASING PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND.

3. I UNDERSTAND THAT THE CABINET, WHOSE TIME WAS MONOPOLIZED BY VERY CONSIDERABLE DOMESTIC ECONOMIC PROBLEMS (SEE MIPT) DECIDED TO DEFER CONSIDERATION OF THE DRAFT UNTIL 21 OCTOBER.

4. FCO PLEASE ADVANCE IMMEDIATE TO PS/SOFS NIO(L) AND TO BELL NIO(L).

5. GRATEFUL IF NIO(P) WOULD MAKE COPY AVAILABLE TO ME ON 20 OCTOBER.

GOODISON

YYYY

DLLNAN 1478

NNNN

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CCBG (2)
CCB1

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Prime Minister
Re Northern Ireland
Secretary mentioned
this to you.
CDP 17/x.

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

16 October 1986

Dear Douglas,

PUBLIC ORDER LEGISLATION

I know that my officials have been keeping yours generally in the picture about my proposals for amending public order legislation in Northern Ireland, but I should like you to be aware of the position which has now been reached.

Publicly I am committed to reviewing public order legislation generally "in the Autumn" in the light of developments in public order law in England and Wales. This will cover public processions and meetings, and incitement to hatred. Additionally I have made clear publicly that as part of that review I will look at the politically highly-charged issue of repealing the Flags and Emblems (Display) Act (NI) 1954.

These are all controversial issues, and in the case of the public processions provisions, there is a time constraint as the Chief Constable needs the legislation in place well before the start of the 'marching season'. In order to ensure that all the necessary stages of the Order-in-Council procedure can be completed by 1 March 1987 it will be necessary to start the ball rolling within the next 4/6 weeks. This will mean that the Proposal may not be able to take account of late changes to your Public Order Bill, but I shall emphasise my intention to try and keep in step with the law in England and Wales, and we can reflect any changes in the final draft Order which would be drawn up after the consultation period.

I enclose, for your information, copies of the draft Proposal and Explanatory Document. You will see that the legislative proposals include:

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(i) a consolidation of miscellaneous public order powers;
(ii) changes to the law on the notification, control and prohibiting of public processions and open-air public meetings. These changes are broadly in line with part II of the Bill but there are a number of differences of detail reflecting the very different circumstances of Northern Ireland;
(iii) an updating of the law to prevent incitement to hatred on grounds of religious opinion. It is intended that this will follow Part III of the Bill (incitement to racial hatred) as closely as possible;
(iv) the repeal of the Flags and Emblems (Display) Act (NI) 1954.

As I explained in my letter of 14 July, I do not intend to follow Part IV of the Bill. I am still considering whether it would be desirable to follow Clauses 38 and 39 of the Bill, but I do not intend to delay publication of the Proposal until those points have been decided.

There is also some support in Northern Ireland for the suggestion, made in the Chief Constable's last Annual Report, that an independent tribunal should be set up which would have a role in determining what conditions should be imposed on potentially controversial processions and which of them should be prohibited. I see very great difficulties with this approach but, in the circumstances, I think the best course is to open the issue up to public debate by publishing a Consultative Paper which would discuss the arguments for and against. Officials are discussing the terms of such a paper with the RUC and I will send you a draft before it is published, which will probably be a week or so after the publication of the Proposal.

[This seems a very dubious idea – surely the Executive must retain control] COP

The publication of the Proposal will undoubtedly give rise to a strong reaction from Loyalists. This will be whipped up by those who are seeking an excuse to promote renewed protests against the Anglo-Irish Agreement, and they will undoubtedly play on the widespread view that Loyalists have (and should retain) an absolute right to march wherever they like in Northern Ireland, and misrepresent the repeal of the Flags and Emblems Act as giving the Irish Tricolour equal status with the Union flag. The Explanatory Document deals with some of the wilder misconceptions about the Act, but it has undoubtedly assumed a quite disproportionate symbolic significance among Loyalists so moves to repeal it may well be used to provoke trouble. On the other hand the Act has assumed an equally disproportionate symbolic significance among nationalists and although it is an entirely redundant piece of legislation its repeal is seen - by both sides of the community - as a test of the

Government's commitment to the principle that the legislation and institutions of Northern Ireland should protect the legitimate interests of both political traditions, and as a test of its commitment to the Anglo-Irish Agreement. I am inclined on balance to proceed with the repeal of the Act but I intend to preserve the position that I am not fully committed to that decision until I have considered the response to the Proposal.

The Proposal will therefore be published within the next 4/6 weeks and I am of course giving close consideration to the most appropriate time. Considerations obviously include the position in the Republic, with the confidence vote and a possible early General Election, the anniversary date for the Agreement and the general security position. I will of course keep colleagues informed, and in the meantime, I should be glad to know for your part that you were satisfied that publication will not create any difficulties during the final stages of the Bill.

On the Parliamentary side the timetable involves debates in both Houses in February in succeeding weeks and I hope that this will be possible for the business managers. I would intend to announce the publication of the Proposal in the House either by means of an oral statement or an arranged PQ.

I am sending copies of this letter to the Prime Minister, the Lord President, the Foreign Secretary, the Chancellor of the Duchy of Lancaster, the Chief Whip and Sir Robert Armstrong.

Yours

TK

ji/JLD

MO 19/3E

SECRETARY OF STATE FOR NORTHERN IRELAND

MACM: NORTHERN IRELAND CONTINGENCY PLANNING

We agreed in July that contingency planning against the possibility of politically motivated industrial action in Northern Ireland should be developed further. Military planners were authorised to approach the Chairman of the Northern Ireland Electricity Service (NIES) for advice in connection with the plan for electricity supply (op CLOUT) which is likely to be crucial to the success of all the plans.

2. This process has now been taken about as far as it can within the present constraints and a number of key questions have been identified which need to be answered before we can form a clear picture of the prospects for defeating such disruption. These questions involve highly sensitive political and military issues in Northern Ireland on which I would value your judgement. But I believe that we have reached the point at which, in view of the very high political stakes, it would be useful to discuss the whole subject at a meeting with those colleagues most closely involved.

PRESENT STATE OF PLANNING

3. A detailed memorandum on the present state of planning is attached. There are six plans for dealing with the maintenance of essential services (electricity, water, the docks, the prison service, the fire service and liquid fuel delivery). The last five are now considered to be generally viable in themselves, provided that a minimum level of mains electricity supply can be maintained. To an extent, the success of all these plans is thus crucially dependent on the prospects for op CLOUT.

OP CLOUT (ELECTRICITY SUPPLY)

4. A viable plan to provide a minimum electricity supply has been drawn up on the basis of the view of the Chairman of the NIES that power industry workers would be unlikely to damage the industry (or otherwise obstruct the use of Servicemen). This rests on the assumptions that senior managers stay at their posts and that selected middle managers and engineers are available either from the NIES or from the mainland. But, before we can be confident that these assumptions would stand up, further work would be necessary to confirm the feasibility of substitution for key people from outside Northern Ireland. In addition, if it were essential to avoid the possibility of an interruption of supply - which could last for up to 7 days with very serious effects on life in the

Province - it would be necessary to intervene before the supply fell to a level which caused the distribution system to shut down.

5. Although the Chairman of the NIES is confident that workers would not seek to damage the industry, military planners have to take a less optimistic view. The power workers and, more to the point, the Protestant leadership, must realise the crucial importance which control of the electricity services would hold in such a dispute. HQNI considers that if Servicemen were brought in to keep essential services going, this could precipitate reactions by hard-line workers in the industry ranging from a sit-in to sabotage action. In their view, contingency plans should cater for this possibility (even if unlikely) because of the effect which it would have on our ability to sustain all our contingency plans. The issue which therefore needs to be addressed is whether military contingency planning should be drawn up against the possibility of taking over by force (either by the police or by the Army directly) the electricity services in Northern Ireland, either to pre-empt the interruption of the supply or in the face of resistance from workers in the industry.

6. The attached memorandum describes in more detail the two basic forms which military intervention might take - a pre-emptive operation intended to avert an interruption in supply and also minimise the risks of organised resistance or intervention only after a breakdown had occurred (which might or might not meet

resistance from strikers). The first of these courses has some superficial attractions, but no feasibility study has been carried out and there are a number of formidable practical difficulties. Moreover, the political risks would be extremely high and, in particular, this course might well lead to the walk-out of essential senior management and it is at present uncertain whether substitution from Great Britain would be feasible. It might well also precipitate reactions outside the power industry.

7. Pre-emptive action or the use of force would be a major departure from normal MACM procedure and merely to draw up contingency plans for such action would be extremely sensitive both politically and militarily. Because of the political and other problems we may decide to rule these courses out now. But if we wish to have these options available in the event of a strike, some further planning is required.

CONCLUSION

8. Detailed planning has raised a number of further questions that need to be answered if we are to be confident that Op CLOUT could succeed in the wide range of situations with which we could be faced. In particular, it would be necessary to identify now some 15 middle managers and 36 engineers (and, if possible, some senior management) would would be available from Great Britain and able to take over key tasks. It is also necessary to decide

whether, at this stage, planning should include the possibilities of the use of force and pre-emptive action. In view of the security sensitivity of this planning, these questions have not so far been raised with the Department of Energy, nor has the Treasury Solicitor's Department been asked about the legal aspects.

9. We need therefore to decide:

a. Whether Department of Energy officials should be invited to carry forward the work of identifying suitable personnel in Great Britain;

b. Whether Law Officers should be invited to give a view on the legal position in the event of pre-emptive action at the start of a dispute before disruption to essential services has occurred;

c. Whether a feasibility study should be undertaken now of the practicality of taking over the power industry by force if necessary in the event of opposition by the power workers;

d. Whether military plans should include a pre-emptive operation to take over the electricity industry when there is clear evidence of the intention of power workers to disrupt the industry but before actual disruption had occurred.

SECURITY

10. The sensitivity of the subject matter of this minute is obvious, but I should draw attention to the particular risks attached to the possibilities of pre-emptive action or the use of force. If we do conclude that these should not be excluded at this stage, any leak would not only have major political consequences but would be likely very seriously to compromise the chances of such action succeeding. On the other hand, if we decide to rule out such action, a leak would remove an important uncertainty for those contemplating disruption and could thus seriously weaken our hand politically. It is essential therefore that knowledge of these aspects of our planning, in particular, is kept to the absolute minimum.

11. I am sending copies of this minute to the Prime Minister, the Lord President of the Council and the Secretary of State for Foreign and Commonwealth Affairs and to Sir Robert Armstrong only.

G.Y.

Ministry of Defence
16th October 1986

NORTHERN IRELAND CONTINGENCY PLANNING

Introduction

1. As agreed by Ministers at the end of July, military staff planners have been working with planners in the Northern Ireland Office to develop contingency planning against possible industrial disruption in Northern Ireland in great detail. There are 6 plans dealing with the maintenance of essential services (water, electricity, the docks, the prison service, the fire service and liquid fuel delivery). Recent work has focused on two plans, Op FOOTWAY, which deals with the maintenance of water supplies, and Op CLOUT, dealing with the maintenance of the electrical industry in the Province. The other four plans have been taken about as far as they can at present and are considered viable in themselves. Nevertheless, the prospects for defeating industrial disruption as a whole are dependent to a greater or lesser degree on the maintenance of water and electricity supplies.

Op FOOTWAY (Water)

2. Contingency planning on Op FOOTWAY is well advanced and no insurmountable problems are foreseen in implementing it in an emergency provided that a minimum level of mains electricity supply is maintained. If this is not achieved it should be possible to maintain water supply in most areas using stand-by

generators but this would not be feasible at Dunore Point, which provides 40% of Belfast's requirement.

Op CLOUT: The Maintenance of the Electricity Industry

3. The maintenance of a minimum level of electrical power in Northern Ireland is crucial to the successful intervention by troops to maintain essential services in Northern Ireland and is a precondition to the success of other contingency plans.

4. The judgement of the Chairman of the Northern Ireland Electricity Service (NIES) is that in the event of industrial action electricity workers would be prepared to maintain output at around 600Mw, which would be the minimum necessary to maintain essential supplies and domestic power only, thus cutting supplies to commerce and industry in the Province, although in the event of wide-spread industrial action their demands would in any case be much reduced.

5. The Chairman NIES considers that even if electricity workers were to embark on an all-out strike they would be unlikely to damage the industry either by active sabotage or by failure to carry out the correct operating or closing down procedures; (they did not do so during the Ulster Workers' Strike of 1974). If this were the case and there was no attempt by the power industry workers to obstruct military intervention it should be possible to provide sufficient Servicemen with the right expertise to

ensure the uninterrupted generation of this minimum level of power. There are, however, four key assumptions:

a. First, selected senior management would stay at work to supervise technical operations. Without senior management the Services would not have the required expertise to operate the industry.

b. Secondly, sufficient middle management would remain at work or would be made available from Great Britain to fill some 15 key posts in the industry.

c. Thirdly, it would be necessary to ensure that suitable engineers (some 36 in all) were available to manage the distribution system, for which the Services do not have the necessary expertise.

d. Fourthly, Servicemen would be able to take over duties in the power stations and the distribution centres before the power output dropped substantially and the switching stations began to "trip off" automatically.

Assessment of Principal Assumptions

6. Senior Management. The assumption that senior management would stay at work to supervise technical operations undertaken

by the Services is a fundamental requirement of all MACM planning both in Great Britain and in Northern Ireland. The NIES is confident that senior management would remain at their posts. HQNI and NIO concur with this view and planning is therefore based on this assumption. Without senior management no military contingency plan would be workable and the transfer of senior management from Great Britain has not been contemplated in drawing up contingency plans.

7. Middle Management and Engineers. It is more difficult to estimate how many, if any, middle management and engineers would remain at work. In order for sensible contingency plans to be drawn up some 15 middle managers (for the power stations) and 36 engineers (for the distribution system) would have to be available from Great Britain to take over key tasks and we would have to ensure that they would be capable of undertaking the tasks on the specific grid (which requires local expertise) in Northern Ireland. For planning to proceed with any confidence it would be necessary to identify the source for such manpower in advance and, even then, given the dissimilarity of the power industry in Northern Ireland, there could still be problems in running the power stations and distribution system. It is not known whether the CEGB would be able to identify volunteers for such a task and given the sensitivity of the subject it would be extremely difficult to raise the subject in advance without risking a serious breach of security which could have embarrassing political repercussions. This is a matter on which

the expert advice of the Energy Department would be essential.

8. Timing of Service Deployments to Power Stations. Although the availability of senior and middle management and some engineers is crucial to the success of an operation to keep the electricity industry going, the critical, political factor in the plan is the point at which Ministers decide that Servicemen should be deployed. In a politically motivated strike of this nature, power workers could manipulate the electricity output to cause selective disruption and uncertainty. If the power output falls consistently below 600 Mw, switching stations around the Province will "trip off" automatically. Unless the contingency plan is implemented before this happens, they would have to be re-established by hand before any power could be distributed. It might take up to 3 days to restore generation from a cold start and a further 4 days would then be needed to re-establish a limited grid. During this 7 day period power supply to essential services in the Province would cease and 40% of the water supplies to Belfast (in the predominantly Catholic West of the City) would be cut off because the pumping station at Dunore Point which supplies them relies on main electrical power exclusively. The overall effect on the other contingency plans and life in the Province generally during this period could be very serious indeed.

Summary of Present Planning

9. To summarise the present state of planning, a viable plan to provide a minimum electricity supply has been drawn up on the basis of the view of the Chairman of the NIES that power industry workers would be unlikely to damage the industry (or otherwise obstruct the use of Servicemen). This rests on the assumption that senior management stayed at their posts and that selected middle management and engineers were made available either from the NIES or Great Britain. However, before we could be confident that these assumptions would stand up further work would be necessary to confirm the feasibility of substitution for key people from outside Northern Ireland. In addition, to avoid the possibility of an interruption of supply which could last up to 7 days with very serious effects on life in the Province it would be necessary to intervene before the supply fell to a level which caused the distribution system to shut down.

Possible Worst Case

10. Although the Chairman of the NIES is confident that workers would not seek to damage the industry, military planners have to take a less optimistic view. The power workers and, more to the point, the Protestant leadership, must realise the crucial importance which control of the electricity services would hold in such a dispute. HQNI considers that if Servicemen were brought in to keep essential services going, this could precipitate a number of reactions by hard-line workers in the industry ranging from a sit-in to sabotage action. Military

intervention might well also precipitate reactions outside the power industry. Nevertheless, in their view, contingency plans should cater for this possibility (even if unlikely) because of the effect which it would have on our ability to sustain all our contingency plans.

11. In the worst case, the power workers would not be prepared to maintain sufficient power to sustain essential services and would be prepared to resist the use of Servicemen to do so. The issue which needs to be addressed is whether military contingency planning should be drawn up against the possibility of taking over by force (either by the police or by the Army directly) the electricity services in Northern Ireland. Such a course would be a major departure from normal MACM planning which assumes that the take-over of an industry by Servicemen will be achieved with minimum resistance from the work-force. Drawing up such a plan would be extremely sensitive both politically and militarily. It is, therefore, considered that Ministerial guidance should now be sought urgently on the way ahead.

Method of Timing of Intervention

12. In the event of a politically motivated strike it is impossible to predict confidently what position we might have to face in the power industry. There is a very wide range of possibilities from the NIES Chairman's view that the workers themselves would continue to provide sufficient supply for

essential services to, at the other extreme, the prospect of a military takeover, in the face of resistance, after the industry had already shut down. Clearly there are also many possible scenarios in between and plans would need to be adjusted to suit the precise circumstances but, from the military point of view, there are two basic forms which intervention might take:

a. Course One. The first course would be to plan on military intervention in the power industry very early in an industrial dispute to pre-empt any action by striking power workers to close down or, at worst, sabotage the electricity industry or to prevent the use of Servicemen. Such a course would hold some superficial military attractions as it could be conducted swiftly by a relatively small force and would retain the essential element of surprise. Nevertheless, no feasibility study has yet been carried out and there are likely to be a number of formidable practical difficulties. It is thought that provided a proclamation of a State of Emergency had been made it would be possible legally to take this action at the start of a dispute where there was clear evidence of the likelihood of disruption to essential services but before this had actually occurred; this is an aspect on which it might be necessary to seek the views of the Law Officers. The political risks would, however, be extremely high. The temperature of the dispute would undoubtedly be heightened and, it

should be stressed that in these circumstances, the pressure on senior management, who are essential to any plan, could be such they would feel unable to stay at their posts. As this would render a military take-over ineffective, if the approach were to be contemplated it would be sensible to investigate in advance whether it would be possible for senior management from Great Britain to be brought in. But if the operation were successful it would give the Government considerable freedom of manoeuvre and would cause the least disruption to the general public.

b. Course Two. The second course would be for Service intervention only to take place after power production had ceased (that is, after the "tripping off" process described in Paragraph 8 had occurred). In presentational and political terms this would probably be less provocative and less risky than moving into the power stations early in a dispute before power production had dropped to below 600Mw and the legal position is likely to be more clear-cut as it could be shown that services essential to the life of the community had been seriously threatened. But the disruption of essential public domestic consumption would last for about a week before it could be restored and re-establishing the grid would be technically an extremely difficult task for the Services even assuming the help of engineers from Great

Britain. In these circumstances the work-force would probably have the opportunity to organise physical opposition to such a take-over both inside and outside the power stations. A very large military force would be required and, even then, the chances of taking over a viable industry would be open to doubt. The success of the operation itself could be jeopardized if military intervention were strongly opposed.

Conclusion

13. Detailed planning has raised a number of further questions that need to be answered if we are to be confident that Op CLOUT could succeed in the wide range of situations with which we could be faced. In particular, it would be necessary to identify now some 15 middle managers and 36 engineers (and, if posible, some senior management) who would be available from Great Britain and able to take over key tasks.

14. It is also necessary to decide whether, at this stage, planning should include the possibilities of the use of force or pre-emption. In view of the security sensitivity of this planning these questions have not so far been raised with the Department of Energy, nor has the Treasury Solicitor's Department been asked about the legal aspects.

15. Ministers should therefore be asked to decide:

a. Whether Department of Energy officials should carry forward the work of identifying suitable personnel in Great Britain;

b. Whether Law Officers should be invited to give a view on the legal position in the event of pre-emptive action at the start of a dispute before disruption to essential services has occurred;

c. Whether a feasibility study should be undertaken now of the practicality of taking over the power industry by force if necessary in the event of opposition by the power workers;

d. Whether military plans should include a pre-emptive operation to take over the electricity industry when there is clear evidence of the intention of power workers to disrupt the industry but before actual disruption had occurred.

DRAFT 14.10.86 (am)

PROPOSAL FOR A DRAFT ORDER IN COUNCIL

PUBLIC ORDER

EXPLANATORY DOCUMENT

Comments on the proposal should be sent to the address below before [six weeks' time].

The Secretary
Law and Order Division
Northern Ireland Office
Stormont House Annexe
BELFAST
BT4 3ST

[ ] 1986

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E.R.

PART I

BACKGROUND AND SCOPE

INTRODUCTION

1. The draft Order would amend and consolidate public order legislation in Northern Ireland at present contained in the Public Order (NI) Order 1981 (1981 No 609 (NI 17)) and part of section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 (1968 Ch 28 (NI)); and repeal the Flags and Emblems (Display) Act (NI) 1954 (1954 Ch 10 (NI)).

2. The Government has been reviewing public order legislation in Northern Ireland in the light of events in the Province and of the Public Order Bill currently before Parliament. The Government believes that it is right that the principles underlying public order legislation should be the same throughout the United Kingdom, although local circumstances require some variations in specific provisions in Northern Ireland.

Control of processions and open-air public meetings

3. Public processions in Northern Ireland attract large numbers of participants. The great majority of such occasions are peaceful and unprovocative. Some however contain great potential for disorder, or are conducted in a way which is intended to intimidate other sections of the community. The proposed changes are intended both to bring the law more closely into line with the provisions of the Public Order Bill and to strengthen the ability of the police to deal with potentially troublesome processions and open-air meetings.

4. The Order would therefore increase the length of advance notice to be given of a public procession and add to the matters to be notified. It would follow the Public Order Bill by enabling the police to impose conditions on public

processions if there was a risk of serious public disorder, serious damage to property or serious disruption to the life of the community, or if the purpose of the procession's organisers was to intimidate others. It would similarly recast the grounds on which the Secretary of State may prohibit the holding of processions and open-air meetings. The Order would also follow the Bill by introducing a power for the police to impose conditions on open-air public meetings.

5. The Order would also end the exemption in the 1981 Order from the requirement to give notice of processions customarily held along a particular route, and of processions organised by trades unions.

Incitement to hatred

6. The legislation against incitement to hatred has proved to be ineffective both in Northern Ireland and in Great Britain. The Public Order Bill is aimed at strengthening the law in Great Britain against incitement to racial hatred, and the draft Order would bring the law on incitement to racial or religious hatred in Northern Ireland into line with the provisions of the Bill.

7. Thus the Order would strengthen the law on incitement to hatred by making the various actions (publication or distribution of threatening, abusive or insulting material; possession of such material with a view to publication or distribution; use of threatening, abusive or insulting words or gestures) offences not only if it were intended to stir up hatred or arouse fear on racial or religious grounds, but also if in the circumstances such hatred or fear were likely to be stirred up or aroused.

Flags and Emblems (Display) Act (NI) 1954

8. This Act is widely misunderstood and has assumed an entirely disproportionate symbolic importance on both sides of

the community. Before reaching any final decision on whether it should be repealed the Government is therefore publishing this Proposal for a draft Order together with this Explanatory Document which sets out the actual legal effect of the Act. The Government hopes that this will make it possible for there to be an informed public debate and encourage interested parties to put forward reasoned views to the Government, so that the final decision can be made on a sound basis.

9. The Act is widely but wrongly believed to protect any display of the Union flag from interference and to make the flying of the Irish tricolour illegal. Neither of these assertions is correct. Section 1 of the Act makes it an offence to prevent or threaten to interfere by force with the display of the Union flag on lawfully occupied land and premises. However, a person interfering with the display of a Union flag on private premises anywhere in the United Kingdom would be committing at least one of a range of offences, including conduct likely to lead to a breach of the peace and criminal damage, so the law already protects the peaceful display of the Union flag in such circumstances. Moreover the Act only applies to displays of the Union flag on private lands or premises: it confers no protection on displays in public places or at work or by marchers; and it is in fact an offence under existing public order legislation (Article 6 of the 1981 Order and Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968) to display any flag (which includes the Union flag), in a public place or at or in relation to any public meeting or public procession, in a manner likely to cause a breach of the peace.

10. Section 2 empowers a police officer to require the removal of any emblem other than the Union flag if he believes its display may cause a breach of the peace, and authorises him to enter premises to remove such an emblem if necessary. The Act does not therefore make the flying of the Irish tricolour illegal in itself in Northern Ireland. Nor would its repeal affect the other public order powers of a police officer to require or effect the removal of a tricolour, or any other flag if he believed its display would lead to a breach of the peace.

11. The Act is therefore in practice redundant and its repeal (which has been recommended in the past by the Standing Advisory Commission on Human Rights) would have no practical legal effect. However, it is seen by many groups as a piece of legislation which is discriminatory and offensive to certain sections of the community in Northern Ireland. Those who see it in this way believe that the effect of the Act is to protect displays of the Union flag where these are being used to project a claim to cultural domination by one section of the community over another rather than to encourage respect for the national flag. There is a strong case for repealing the Act so that the law on the display of flags and emblems in Northern Ireland can be on the same basis as in the rest of the United Kingdom. Repeal of the Act would make no change whatsoever to the position that the Union flag is the official flag of Northern Ireland as it is of the United Kingdom as a whole; and as such is the flag which is flown from public buildings on public occasions.

Other public order offences

12. The Order would re-enact with amendments the offences in Articles 5 to 12 of the Public Order (NI) Order 1981 and increase the penalties for certain of these offences.

Other changes.

13. The Order would consolidate the public order offences in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 with the main body of public order legislation.

E. R.

PART II

PROVISIONS OF THE DRAFT ORDER

Title and commencement

14. Article 1 would set out the title of the Order and provide that it should come into operation one month after being made.

Interpretation

15. Article 2 would deal with the interpretation of expressions used in the Order.

PROCESSIONS AND MEETINGS

Advance notice of public processions

16. Article 3 would require written notice of any proposed public procession (other than a funeral procession) to be left at the police station nearest to the proposed starting place, not less than 7 days in advance, and set out the particulars to be given in the notice. It would make it an offence to organise or take part in public processions in respect of which notice had not been given, or which were held on a date, at a time or along a route different from that in the notice. The Article would provide for defences to those charges and prescribe penalties.

Imposing conditions on public processions and open-air public meetings

17. Article 4 would empower a senior police officer (ie an Inspector or above of the Royal Ulster Constabulary in the case of processions or meetings in progress, or a superintendent or above in the case of proposed processions or meetings) to impose conditions on the organisers and participants if he reasonably believed that the procession or meeting would result in serious public disorder, serious damage to property or

serious disruption to the life of the community, or that the purpose of the organisers was to intimidate other people. The Article would make it an offence knowingly to fail to comply with such conditions unless the failure arose from circumstances beyond the person's control, and prescribe penalties.

Prohibiting public processions and open-air public meetings

18. Article 5 would provide for the Secretary of State to make an order prohibiting the holding of public processions or open-air public meetings if he were of the opinion that the powers of the Royal Ulster Constabulary to impose conditions would not be sufficient to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or intimidation, or that the holding of any procession or public meeting in any area was likely to cause serious disorder or disruption or to place undue demands on the security forces. He could either prohibit all processions or meetings (or specified classes) in an area for up to 3 months or permit the holding of one procession or meeting and prohibit all others for up to one month. The Secretary of State would be required (as he is at present by paragraph 15(2) of Schedule 1 of the Police Act (NI) 1970) to consult, where practicable, a committee of the Police Authority before making a prohibition order, but the order would not be invalid if the committee were not consulted. The Article would make it an offence to organise or participate in a prohibited procession or open-air meeting, and prescribe penalties.

Taking part in a public procession as a member of an unregistered band

19. Article 6 would re-enact Article 5 of the 1981 Order: it would allow the Secretary of State to make an order requiring the registration of bands. Such an order could provide for registration to be subject to conditions. It would be an offence to take part in a public procession as a member of a

band which should be registered but was not; or to fail to comply with a condition of registration.

Endeavours to break up public processions or meetings

20. Article 7 would substantially re-enact Articles 7 and 10 of the 1981 Order, and make it an offence to attempt to prevent or hinder any lawful public procession or to prevent the transaction of the business of a lawful public meeting. It would prescribe penalties. This Article would not apply to election meetings.

STIRRING UP HATRED AGAINST, OR AROUSING FEAR OF, A SECTION OF THE PUBLIC

Publishing or distributing inflammatory matter to stir up hatred or arouse fear

21. Article 8(1) would make it an offence to publish or distribute written or other matter which was threatening, abusive or insulting with intent to stir up hatred or arouse fear on the grounds of religious belief, colour, race or ethnic or national origins, or where in the circumstances such hatred or fear was likely to be aroused.

Article 8(2) would make it an offence to possess such matter with a view to publication or distribution where hatred or fear was intended or likely to be aroused.

Articles 8(3) and (4) would exempt fair and accurate reports of proceedings in courts, tribunals, Parliament or the Assembly.

Articles 8(5) and (6) would provide for a defence and for penalties.

Articles 8(7) and (8) would empower a resident magistrate to issue a warrant to enter premises to search for and seize such written or other matter, and for a constable to use reasonable force if necessary in pursuance of a warrant.

Article 8(9) would define expressions used in the Article.

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Use of inflammatory words or gestures to stir up hatred or arouse fear

22. Article 9 would make it an offence to use threatening, abusive or insulting words or gestures intended or likely to stir up hatred or arouse fear; and would provide defences and penalties.

MISCELLANEOUS PUBLIC ORDER OFFENCES

Riotous, disorderly or indecent behaviour in public places

23. Article 10 would re-enact the offence in section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968 of using riotous, disorderly or indecent behaviour, or behaviour likely to cause a breech of the peace, in a public place; and provide penalties.

Provocative conduct in public place or at public meeting or procession

24. Article 11 would re-enact the offences contained in Article 6 of the Public Order (NI) Order 1981.

Obstructive sitting etc in a public place

25. Article 12 would re-enact the provisions of Article 8 of the 1981 Order.

Wearing of uniform in public place or at public meeting

26. Article 13 would re-enact the provisions of Article 11 of the 1981 Order.

Carrying of offensive weapon in a public place

27. Article 14 would re-enact the provisions of Article 12 of the 1981 Order with minor amendments.

Offences in relation to public buildings and activities therein

28. Article 15 would substantially re-enact Article 9 of the 1981 Order, which makes it an offence to trespass in a public building (as defined in Article 15(6), (7) and (8)), to refuse to leave a public building if directed to do so by an

authorised person, or knowingly to interfere with the carrying on of any lawful activity in a public building. It empowers a constable to remove a person committing an offence under the Article from a public building if so requested.

GENERAL PROVISIONS RELATING TO OFFENCES

Powers of arrest

29. Article 16 would deal with powers of arrest for offences under the Order, and powers to require persons to give their name and address in connection with certain offences under the Order.

Consent to prosecution

30. Article 17 would require the consent of the Attorney General for the institution of prosecutions for certain offences under the Order.

Forfeiture

31. Article 18 would empower a court convicting for certain offences to order the forfeiture, destruction or disposal of certain articles, and make incidental provisions.

REPEAL OF FLAGS AND EMBLEMS (DISPLAY) ACT (NI) 1954

32. Article 19 would repeal the Act.

SUPPLEMENTARY

33. Article 20 would contain supplementary and transitional provisions and repeals.

PART III

FINANCIAL AND STAFFING IMPLICATIONS

34. It is not expected that the Order would result in any increase or savings in public service expenditure or manpower.

COMPARISON WITH THE LAW IN ENGLAND AND WALES

35. In England and Wales Part II of the Public Order Bill makes provisions similar in principle to those in Articles 3, 4 and 5 of the draft Order, although the requirements on organisers in the draft Order would be more extensive than those in the Bill; the Secretary of State's power to prohibit processions would be exercisable on wider grounds than the powers in England and Wales; the Order would make participants, as well as organisers, of illegal marches guilty of an offence; and penalties in the Order would be higher than those in the Bill. Part III of the Bill contains provisions similar to Articles 8 and 9 of the draft Order, although the Order would cover religious as well as racial hatred. The Bill is subject to amendment, and any changes will be taken into account when finalising the draft Order.

PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974

DRAFT STATUTORY INSTRUMENTS

1986 No. (N.I.)

NORTHERN IRELAND

Public Order (Northern Ireland) Order 1986

To be laid before Parliament in draft

Made

Coming into operation

ARRANGEMENT OF ORDER

Article

At the Court at , the day of 1986

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974[1974 c. 28] and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Title and commencement

1.- (1) This Order may be cited as the Public Order (Northern Ireland) Order 1986.

(2) This Order shall come into operation on the expiration of one month from the day on which it is made.

Interpretation

2.- (1) The Interpretation Act (Northern Ireland) 1954[1954 c. 33 (N.I.)] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order -

"area" means the whole or any part of Northern Ireland;

"band" means a group of two or more people who carry for the purpose of playing or sounding, or engage in the playing or sounding of, musical or other instruments;

"meeting" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

"open-air public meeting" means a public meeting held otherwise than inside a covered and enclosed structure of an immoveable nature;

"public meeting" includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise;

"public place" means any street, road or highway and any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

"public procession" means a procession in a public place, whether or not involving the use of vehicles or other conveyances;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954[1954 c. 33 (N.I.)].

Processions and meetings

Advance notice of public processions

3.- (1) A person proposing to organise a public procession shall, not less than 7 days before the date when the procession is to be held, give written notice of that proposal in accordance with paragraph (2) to a member of the Royal Ulster Constabulary not below the rank of sergeant by leaving the notice with him at the police station nearest to the proposed place of commencement of that procession.

(2) The notice to be given under paragraph (1) shall specify -

(a) the date and time when the procession is to be held;

(b) its route;

(c) the number of persons likely to take part in it;

(d) the number and, where reasonably practicable, the names of any bands likely to take part in it;

(e) the arrangements for its control being made by the person proposing to organise it; and

(f) the name and address of that person.

(3) Paragraph (1) does not apply in relation to a funeral procession.

(4) A person who organises or takes part in a public procession -

(a) in respect of which notice has not been given under paragraph (1); or

(b) which is held on a date, at a time or along a route which differs from the date, time or route specified in relation to it in the notice given under paragraph (1),

shall be guilty of an offence.

(5) In proceedings for an offence under paragraph (4) it is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to give notice under paragraph (1) or (as the case may be) the difference of date, time or route.

(6) To the extent that an alleged offence under paragraph (4) turns on a difference of date, time or route it is a defence for the accused to prove that the difference arose from -

(a) circumstances beyond his control;

(b) something done in compliance with conditions imposed under Article 4(1); or

(c) something done with the agreement of a member of the Royal Ulster Constabulary not below the rank of inspector.

(7) A person guilty of an offence under paragraph (4) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 3 on the standard scale, or to both.

Imposing conditions on public processions and open-air public meetings

4.- (1) If a senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that -

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any place specified in the directions.

(2) If a senior police officer, having regard to the time or place at which and the circumstances in which any open-air public meeting is being held or is intended to be held, reasonably believes that -

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community; or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do;

he may give directions imposing on the persons organising or taking part in the meeting such conditions as to the place at which the meeting may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(3) In paragraphs (1) and (2) "a senior police officer" means -

(a) in relation to a procession or open-air public meeting being held, or to a procession or open-air public meeting intended to be held in a case where persons are assembling with a view to taking part in it, a member of the Royal Ulster Constabulary not below the rank of inspector;

(b) in relation to a procession or open-air public meeting intended to be held in a case where sub-paragraph (a) does not apply, a member of the Royal Ulster Constabulary not below the rank of superintendent.

(4) Directions given by virtue of paragraph (3)(b) shall be given in writing.

(5) A person who knowingly fails to comply with a condition imposed under this Article shall be guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person guilty of an offence under paragraph (5) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Prohibiting public processions and open-air public meetings

5.- (1) If at any time the Secretary of State is of the opinion, in consequence of information furnished to him by the Chief Constable or for any other reason, that -

(a) the exercise of the powers conferred by Article 4 in any area will not be sufficient to prevent such disorder, damage, disruption or intimidation as is referred to in paragraphs (1) and (2) of that Article; or

(b) the holding in any area or place of any public procession or any open-air public meeting is likely to cause -

(i) serious public disorder;

(ii) serious disruption to the life of the community; or

(iii) undue demands to be made upon the police or military forces,

he may make an order -

(A) prohibiting, for such period not exceeding 3 months as may be specified in the order, the holding in that area or place of all public processions or open-air public meetings or of such classes of public procession or open-air public meeting as may be so specified; or

(B) permitting the holding in an area or place of a public procession or open-air public meeting specified in the order and prohibiting, for such period not exceeding one month as may be specified in the order, the holding in that area or place of any other public procession or open-air public meeting or of any class of public procession or open-air public meeting specified in the order.

(2) Wherever practicable, the Secretary of State shall, before making an order under paragraph (1), consult the committee of the Police Authority for Northern Ireland constituted under paragraph 15(2) of Schedule 1 to the Police Act (Northern Ireland) 1970[1970 c. 9 (N.I.)]; but nothing in this paragraph shall affect the validity of any such order.

(3) A recital in an order made by the Secretary of State under paragraph (1) as to his opinion and the information upon which that opinion was formed shall be conclusive evidence of the matters stated therein.

(4) The Chief Constable may delegate, to such extent and subject to such conditions as he may specify, his functions under paragraph (1) to a member of the Royal Ulster Constabulary not below the rank of Assistant Chief Constable.

(5) A person who -

(a) organises a public procession or open-air public meeting the holding of which he knows is prohibited by virtue of an order under this Article; or

(b) takes part in a public procession or open-air public meeting the holding of which he knows is prohibited by virtue of an order under this Article,

shall be guilty of an offence.

(6) A person guilty of an offence under paragraph (5) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Taking part in public procession as member of unregistered band

6.- (1) The Secretary of State may by order provide for the registration of bands.

(2) Without prejudice to the generality of paragraph (1), an order under that paragraph may -

(a) provide for registration to be subject to such conditions as may be specified in the order;

(b) exclude from its operation such bands or bands of such descriptions as may be so specified.

(3) A person who knowingly takes part in a public procession as a member of a band which -

(a) is required by an order under paragraph (1) to be registered, but is not so registered; or

(b) does not comply with any condition subject to which it is registered under such an order,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (3) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 3 on the standard scale.

(5) An order made under paragraph (1) by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946[1946 c. 36] shall apply accordingly.

Endeavours to break up public processions or public meetings

7.- (1) A person who for the purpose of preventing or hindering any lawful public procession or of annoying persons taking part in or endeavouring to take part in any such procession hinders, molests, obstructs or acts in a disorderly manner towards, or behaves offensively and abusively towards, those persons or any of them shall be guilty of an offence.

(2) A person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence.

(3) Subject to paragraph (4), a person guilty of an offence under paragraph (1) or (2) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) Paragraph (3) does not apply to a person who commits an offence under paragraph (2) at a meeting referred to in paragraph 13 of Schedule 9 to the Electoral Law Act (Northern Ireland) 1962[1962 c. 14 (N.I.)].

Stirring up of hatred against, or arousing fear of, a section of the public

Publishing or distributing inflammatory matter to stir up hatred or arouse fear

8.- (1) A person who publishes or distributes written or other matter which is threatening, abusive or insulting is guilty of an offence if -

(a) he intends by the publication or distribution of the matter to stir up hatred or arouse fear; or

(b) having regard to all the circumstances, hatred is likely to be stirred up or fear is likely to be aroused as a result of the publication or distribution of the matter.

(2) A person who has threatening, abusive or insulting written or other matter in his possession with a view to its publication or distribution (whether or not by himself) is guilty of an offence in a case where -

(a) he intends hatred to be stirred up or fear to be aroused by the publication or distribution of the matter; or

(b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused as a result of the publication or distribution of the matter,

and for this purpose regard shall be had to such publication or distribution as he has, or it may reasonably be inferred he has, in view.

(3) Paragraphs (1) and (2) do not apply where the matter consists of or is contained in a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority, provided the report is (or is to be) published contemporaneously with those proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, is (or is to be) published as soon as publication is reasonably practicable and lawful.

(4) Paragraphs (1) and (2) do not apply where the matter consists of or is contained in a fair and accurate report of proceedings in Parliament or in the Assembly.

(5) In proceedings for an offence under paragraph (1) or (2) it is a defence for an accused who did not intend to stir up hatred or arouse fear to prove that he was

not aware of the content of the matter and neither suspected nor had reason to suspect it of being threatening, abusive or insulting.

(6) A person guilty of an offence under paragraph (1) or (2) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exeeding 2 years or to a fine, or to both.

(7) If a resident magistrate is satisfied on a complaint on oath made by a constable that there are reasonable grounds for suspecting that a person has possession of matter in contravention of paragraph (2), the resident magistrate may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the matter is situated and to seize and remove anything which the constable reasonably suspects to be or include the matter.

(8) A constable entering or searching premises in pursuance of a warrant issued under paragraph (7) may use reasonable force if necessary.

(9) In this Article -

"distribute" means distribute to the public or a section of it;

"fear" means fear of any section of the public in Northern Ireland on grounds of religious belief, colour, race or ethnic or national origins;

"hatred" means hatred of any section of the public in Northern Ireland on grounds of religious belief, colour, race or ethnic or national origins;

"premises" includes any place and, in particular, includes -

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation, as defined in section 1(3)(b) of the Mineral Workings (Offshore Installations) Act 1971[1971 c. 61]; and

(c) any tent or moveable structure;

"publish" means publish to the public or a section of it;

"written matter" includes any writing, sign or visible representation.

Use of inflammatory words or gestures to stir up hatred or arouse fear

9.- (1) A person who uses words or gestures which are threatening, abusive or insulting is guilty of an offence if -

(a) he intends by the use of the words or gestures to stir up hatred or arouse fear; or

(b) having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused as a result of the use of the words or gestures.

(2) An offence under paragraph (1) may be committed in a private or public place, except that no offence is committed by the use of words or gestures by a person inside a dwelling which are not heard or seen except by other persons in that or another dwelling.

(3) A person who does not intend to stir up hatred or arouse fear is guilty of an offence under paragraph (1) only if he intends his words or gestures to be, or is aware that they may be, threatening, abusive or insulting.

(4) In proceedings for an offence under paragraph (1) it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that his words or gestures would be heard or seen by a person outside that or any other dwelling.

(5) A person guilty of an offence under paragraph (1) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(6) In this Article -

"dwelling" means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose "structure" includes a tent, caravan, vehicle, vessel or other temporary or moveable structure;

"fear" and "hatred" have the same meanings as in Article 8.

Miscellaneous public order offences

Riotous, disorderly or indecent behaviour in public place

10.- (1) A person who in any public place uses -

(a) riotous, disorderly or indecent behaviour; or

(b) behaviour whereby a breach of the peace is likely to be occasioned,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

Provocative conduct in public place or at public meeting or procession

11.- (1) A person who in any public place or at or in relation to any public meeting or public procession -

(a) uses threatening, abusive or insulting words or behaviour; or

(b) displays anything or does any act; or

(c) being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done thereon,

with intent to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned (whether immediately or at any time afterwards) shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

Obstructive sitting, etc., in public place

12.- (1) A person who, by sitting, kneeling or lying down in a public place, wilfully obstructs or seeks to obstruct traffic or wilfully hinders, or seeks to hinder, any lawful activity, shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 1 month or to a fine not exceeding level 3 on the standard scale, or to both.

Wearing of uniform in public place or at public meeting

13.- (1) Subject to paragraph (2), a person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence.

(2) The Chief Constable, if satisfied that the wearing thereof on any ceremonial anniversary, or other special occasion, will not be likely to involve risk of public disorder, may, with the consent of the Secretary of State, by order permit the wearing of the uniform on that occasion either absolutely or subject to any conditions specified in the order.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to imprisonment for a term not exceeding 1 month or to a fine not exceeding level 4 on the standard scale, or to both.

Carrying of offensive weapon in public place

14.- (1) A person who, without lawful authority or reasonable excuse (proof of which lies on him), has with him in any public place any offensive weapon shall be guilty of an offence.

(2) In paragraph (1) "offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

(3) A person guilty of an offence under paragraph (1) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

Offences in relation to public buildings and activities therein

15.- (1) A person who -

(a) enters any public building as a trespasser; or

(b) not being engaged in the discharge of duties, or the performance of obligations, connected with activities normally carried on in a public building wilfully neglects or fails to comply as soon as is practicable with a direction to leave that building given by an authorised person or by a constable, at the request of an authorised person; or

(c) knowingly interferes with the carrying on of any lawful activity in any public building,

shall, without prejudice to the operation of any other statutory provision or rule of law, be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.

(3) A constable, if so requested by an authorised person, may remove from a public building any person who commits an offence under paragraph (1) in that building.

(4) An authorised person who gives a direction under paragraph (1)(b) to any person shall, if so required by that person, produce his authorisation to give such a direction.

(5) In this Article "authorised person", in relation to a public building, means a person authorised in writing by the body or person owning, or lawfully occupying or

using the building to give directions under paragraph (1)(b) with respect to that building.

(6) In this Article "public building" includes -

(a) any building which -

(i) is owned, occupied or used for any purpose by or on behalf of a public body or for the purposes of any grant-aided school or institution of further or higher education; or

(ii) is occupied or used for judicial or police purposes or for the purposes of the Assembly;

(b) any part of such a building;

(c) any place or thing which is within the curtilage of such a building.

(7) For the purposes of this Article any place which is -

(a) part of the Stormont Estate within the meaning of the Stormont Regulation and Government Property Act (Northern Ireland) 1933[1933 c. 6 (N.I.)]; or

(b) part of the demesne and other lands referred to in section 1 of the Government Property (Amendment) Act (Northern Ireland) 1955[1955 c. 2 (N.I.)],

shall be deemed to be within the curtilage of a public building.

(8) In this Article "public body" includes -

(a) a department of the Government of the United Kingdom or a Northern Ireland department;

(b) a district council or any committee appointed wholly or partly by a district council;

(c) any board, commissioners or other body authorised to supply services under any statutory provision, whether of a general or special nature; and

(d) any other public authority, board, commissioners or body of any kind constituted by or under any statutory provision, whether of a general or special nature.

General provisions relating to offences

Powers of arrest, etc.

16.- (1) A constable in uniform may arrest without warrant any person whom he has reasonable grounds for suspecting to be committing or to have committed an offence under any provision of this Order.

(2) If a constable has reasonable grounds for suspecting any person of committing or being about to commit or to having committed an offence under Article 7(1) or (2), 12(1) or 13(1), he may require that person to declare to him immediately his name and address, and if that person refuses or fails to do so or gives a false name or address he shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Consent to prosecution

17. A prosecution for an offence under Article 8(1) or (2), 9(1) or 13 shall not be instituted except by or with the consent of the Attorney General.

Forfeiture

18.- (1) A court by or before which a person is convicted of an offence under Article 8(2), 11(1) or 14(1) may make an order for the forfeiture, destruction or disposal of any relevant article.

(2) In paragraph (1) "relevant article" means -

(a) in relation to an offence under Article 8(2), any written or other matter shown to the satisfaction of the court to contain or consist of written or other matter to which the offence relates;

(b) in relation to an offence under Article 11(1), any thing in respect of which the offence was committed;

(c) in relation to an offence under Article 14(1), any weapon in respect of which the offence was committed.

(3) An order made under paragraph (1) shall not take effect until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned; and for this purpose -

(a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Repeal of Flags and Emblems (Display) Act (Northern Ireland) 1954

Repeal of Flags and Emblems (Display) Act (Northern Ireland) 1954

19. The Flags and Emblems (Display) Act (Northern Ireland) 1954[1954 c. 10 (N.I.)] shall cease to have effect.

Supplementary

Amendments, savings, transitional provisions and repeals

20.- (1) In Schedule 9 to the Electoral Law Act (Northern Ireland) 1962[1962 c. 14 (N.I.)] for the words "Article 10(1) of the Public Order (Northern Ireland) Order 1981" there shall be substituted the words "Article 7(2) of the Public Order (Northern Ireland) Order 1986".

(2) In Schedule 1 to the Police Act (Northern Ireland) 1970[1970 c. 9 (N.I.)] in paragraph 15(2) for the words from "in connection with" to the end there shall be substituted the words "in accordance with the provisions of Article 5(2) of the Public Order (Northern Ireland) Order 1986".

(3) Nothing in this Order affects the common law powers in Northern Ireland to deal with or prevent a breach of the peace.

(4) Nothing in a provision of this Order applies in relation to an offence committed or act done before the provision comes into operation.

(5) In relation to any public procession to be held on or before the sixth day after the day on which this Order comes into operation , Article 3(1) shall have effect with the substitution for the words "7 days before the date when the procession is to be held" of the words "120 hours before the proposed time of commencement of the procession".

(6) The statutory provisions set out in columns 1 and 2 of the Schedule are hereby repealed to the extent specified in the third column of that Schedule.

Clerk of the Privy Council.

Article 20(6).

SCHEDULE

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1954 c. 10.	The Flags and Emblems (Display) Act (Northern Ireland) 1954.	The whole Act.
1968 c. 28 (N.I.).	The Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.	In section 9(1) the words from "in any street" to "charge) or".
1981 NI 17.	The Public Order (Northern Ireland) Order 1981.	The whole Order.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order repeals and re-enacts with amendments the Public Order (Northern Ireland) Order 1981.

The principal amendments are to increase the length of advance notice to be given of a public procession, to add to the matters to be notified, to widen the grounds on which conditions may be imposed by the police on public processions and on which the Secretary of State may prohibit public processions and open-air public meetings and to confer on the police new powers to impose conditions on open-air public meetings.

The Order also amends the law on incitement to hatred and repeals the Flags and Emblems (Display) Act (Northern Ireland) 1954.

PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH 1 OF SCHEDULE 1 TO THE NORTHERN IRELAND ACT 1974

DRAFT STATUTORY INSTRUMENTS

1986 No. (N.I.)

NORTHERN IRELAND

Public Order (Northern Ireland) Order 1986

DRAFT (2)

24 September 1986

subject cc: master
ops

(3) MR STARK

cc - Mr Powell
Sir R Andrew
Mr Goodall
Mr Mallaby

''''

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CONFIDENTIAL
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CONFIDENTIAL
FM CABINET OFFICE LONDON
TO FLASH DUBLIN
TELNO MISC. 295
OF 031850Z OCTOBER 86

PLEASE TRANSMIT THE FOLLOWING PERSONAL MESSAGE FROM THE PRIME MINISTER TO THE TAOISEACH AT THE EARLIEST POSSIBLE MOMENT.

MESSAGE BEGINS.

DEAR GARRETT,

THANK YOU FOR YOUR MESSAGE OF 1 OCTOBER. ROBERT ARMSTRONG HAS ALSO GIVEN ME A FULL REPORT OF YOUR TELEPHONE CONVERSATION WITH HIM.

I WAS VERY GLAD TO HEAR THAT YOU AND YOUR COLLEAGUES ARE INTENDING TO INTRODUCE AN EARLY BILL TO PERMIT IRISH RATIFICATION OF THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM WITHOUT RESERVATIONS. AS YOU KNOW, WE ATTACH THE GREATEST IMPORTANCE TO THIS. SUCH A BILL IS WIDELY EXPECTED IN NORTHERN IRELAND AND WILL BE AN ESSENTIAL ELEMENT IN OUR PUBLIC PRESENTTION OF THE TANGIBLE BENEFITS THAT THE ANGLO-IRISH AGREEMENT CAN BRING.

I KNOW THAT YOU IN TURN ATTACH GREAT IMPORTANCE TO ENSURING PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND. I ALSO TAKE VERY SERIOUSLY THE OBLIGATIONS WHICH BOTH GOVERNMENTS ACCEPTED IN ARTICLE 8 OF THE AGREEMENT. I HAVE REFLECTED ON WHAT YOU SAID ABOUT THE IMPORTANCE OF A CHANGE IN THIS AREA TO MAXIMISE THE CHANCES OF YOUR BILL'S SUCCESSFUL PASSAGE. I AM WELL AWARE OF THE DIFFICULTIES THAT YOU FACE. MY COLLEAGUES AND I HAVE CONSIDERED IN DETAIL WHETHER THE INTRODUCTION OF THREE-JUDGE COURTS IS THE RIGHT CHANGE TO MAKE. I HAVE TO TELL YOU THAT WE HAVE COME TO THE CONCLUSION THAT IT WOULD NOT. THE DIFFICULTIES WE HAVE FOUND WITH THE PROPOSITION WILL BE FAMILIAR TO YOU BECAUSE THEY HAVE BEEN FULLY EXPOUNDED IN THE INTERGOVERNMENTAL CONFERENCE WORKING GROUP.

THERE ARE OTHER - THOUGH ADMITTEDLY LESSER - CHANGES THAT WE CAN MAKE, SOME OF WHICH ARE ALREADY IN HAND. WE HAVE ALREADY INCREASED THE RANGE OF SCHEDULED OFFENCES WHERE THE ATTORNEY GENERAL CAN DIRECT A JURY TRIAL. WE SHALL SOON BE:

- INTRODUCING A TEST OF REASONABLE GROUNDS OF SUSPICION FOR THE EXERCISE OF MOST POWERS, INCLUDING ARREST POWERS, UNDER THE EMERGENCY PROVISIONS ACT:

- STRENGTHENING THE CIVIL LIBERTIES OF DEFENDANTS BY SHIFTING THE ONUS IN BAIL CASES TOWARDS THE PROSECUTION:

- FURTHER PROTECTING THE ACCUSED BY CLARIFYING AND RESTATING THE JUDGE'S DISCRETION TO REJECT EVIDENCE OBTAINED FROM ADMISSIONS AND CONFESSIONS:

- ENSURING THAT CONTINUATION OF THE EMERGENCY PROVISIONS ACT BEYOND FIVE YEARS WOULD REQUIRE A NEW ACT OF PARLIAMENT: AND

- ENACTING NEW PROVISIONS TO PROTECT THE RIGHTS OF THOSE DETAINED UNDER EMERGENCY LEGISLATION AND HELD IN POLICE CUSTODY.

WE HAVE ALREADY TAKEN MAJOR STEPS TO REDUCE THE LENGTH OF TIME ELAPSING BETWEEN FIRST REMAND AND TRIAL, AND I HAVE ASKED FOR A FRESH LOOK TO BE TAKEN, TO SEE WHETHER THERE ARE CHANGES IN PROCEDURES IN CIVIL CASES WHICH MIGHT EASE THE PROBLEM BY RELEASING MORE JUDGE-TIME FOR CRIMINAL CASES.

THE ATTORNEY GENERAL HAS ALSO INFORMED ME THAT, IN CONSIDERING THE BRINGING OF PROCEEDINGS WHICH MAY INVOLVE MULTIPLE DEFENDANTS, HE AND THE DIRECTOR OF PUBLIC PROSECUTIONS WILL OF COURSE PAY THE GREATEST ATTENTION TO THE OBSERVATIONS OF THE LORD CHIEF JUSTICE IN THE RECENT CASE OF R V. DONNELLY AND OTHERS.

I KNOW THAT OUR DECISION ON THREE-JUDGE COURTS WILL BE A DISAPPOINTMENT TO YOU. I CAN ASSURE YOU THAT WE HAVE NOT REACHED THIS CONCLUSION LIGHTLY. I CAN ALSO ASSURE YOU THAT MY COLLEAGUES AND I REMAIN WHOLLY COMMITTED TO THE ANGLO-IRISH AGREEMENT, AND WE WILL CONTINUE IN OUR EFFORTS TO MAKE PROGRESS, WITH THE HELP OF THE IRISH GOVERNMENT, ON ALL THE ISSUES COVERED IN ARTICLE 8 OF THE AGREEMENT.

FINALLY, I APPRECIATE THE DIRECT PERSONAL INTEREST THAT YOU ARE TAKING IN THE IMPROVEMENT OF CROSS-BORDER SECURITY CO-OPERATION. THIS IS ANOTHER AREA WHERE IT IS VITAL THAT WE SHOULD SHOW PROGRESS IN TANGIBLE FORM. APART FROM BEING ESSENTIAL IN THE STRUGGLE AGAINST TERRORISM, PROGRESS IN THIS FIELD CAN HELP US TO COUNTER UNIONIST OPPOSITION TO THE ANGLO-IRISH AGREEMENT. I KNOW THAT PETER BARRY AND TOM KING HAVE SPOKEN IN THE PAST FEW DAYS ABOUT HOW TO TAKE MATTERS FORWARD. IT REQUIRES CAREFUL HANDLING AND I UNDERSTAND THAT IT WILL BE DISCUSSED FURTHER AT THE MEETING OF THE INTERGOVERNMENTAL CONFERENCE NEXT WEEK.

YOURS SINCERELY

MARGARET.

MESSAGE ENDS

YYYY

CYLNAN 0722

NNNN

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 .....

MO 19/3L

2 October 1986

Dear Tom,

NORTHERN IRELAND FORCE LEVELS AND ADDITIONAL RE ASSISTANCE

Thank you for your letter of 15th September in which you requested additional Royal Engineer assistance in Northern Ireland. I have since also received your letter of 23rd September on force levels in the Province. As both letters focus essentially on the question of the deployment of extra troops to the Province I will deal with them together.

I was most grateful for your warm words of appreciation of the efforts which have been made by the Royal Engineers in support of the police over the last 10 months. I have passed on your high praise to the Engineer-in-Chief.

I do not wish to prolong our exchanges over the overall threat and the level of violence in the Province today compared

The Rt Hon Tom King MP

with the last year or so. As I mentioned in my letter of 10th September, we have never sought to question the detailed threat assessments which have been made and there undoubtedly continues to be a high level of PIRA activity which has led to surges of violence at different times throughout the last 18 months or so, though it is difficult to demonstrate conclusively that the underlying level of violence is significantly different now from what it was 12 or even 18 months ago.

My concern is that we should not be distracted by an over-emphasis on the detailed assessment of the threat from addressing the fundamental issues. These are whether, given the severe 'overstretch' with which the infantry and Royal Engineers in particular are faced, we should:

a. Add indefinitely to that overstretch by continuing to employ soldiers on jobs which in our view are best handled by the police; and

b. Exacerbate Royal Engineer overstretch and turbulence by using Sappers to carry out civil construction tasks on behalf of the RUC without positively seeking other solutions.

On the first point, the Army believes that many of the commitments which they have been asked to undertake by the RUC

do not lead to the most effective use of Army manpower. The expansion of the RUC to enable them to take back these essentially protective tasks, perhaps by recruiting manpower for a specific and limited role, would not only release Army manpower for more active anti-terrorist operations to which their skills are more appropriate, but also, and more importantly, would lead to a reduction in infantry force levels in the Province. As your letter of 25th September indicates, there is likely to be resistance to this from the RUC for reasons which I can understand. But unless there are some positive developments in this area to enable the police to look after their own protection it is difficult to see how the Army's commitment can be contained, let alone reduced.

We must focus now on a proper plan for the future withdrawal of the 2 reinforcement battalions on the lines outlined in my letter of 10th September. The current arrangements are disruptive for Army planning and, as the Prime Minister has commented, can lead to an open-ended commitment. It remains my intention, therefore, to withdraw one infantry battalion at the end of its tour after Christmas and, if you consider it necessary, to leave the second additional battalion in the Province for the whole of 1987 in order to allow you time to find solutions to the RUC's manpower problems.

As for Royal Engineer assistance, the provision of 2 consecutive additional squadrons covering an 8 month period from February 1987 would cause me some difficulty. I am prepared to deploy one squadron as soon as possible after February 1987 for a period of 4 months which should permit the re-building of 2 RUC stations. But I hope that for the period after June 1987, an alternative solution can be found by positive moves to adopt one or more of the options referred to in your letter of 15th September. This will allow your Department almost 9 months in which to make other arrangements employing civil labour. I am anxious to avoid the request for Royal Engineer support on essentially civil tasks taking on the appearance of yet another open-ended commitment.

Finally, on the question of the security fence at the Maze Prison, as you know the Army has been pressing for a reduction in this static task for some time as we do not regard it as a proper role for soldiers. I am disappointed therefore if there has been a misunderstanding over the extent to which you might be able to achieve reductions in military posts there. But, I must make it plain that unless the Prison Guard Force can be radically reduced in size to around 30 men, there cannot be any possibility of the Army finding the additional Royal Engineer manpower to re-build the fence.

The central issue continues to be that of how we can reduce the pressures on the infantry and Royal Engineers by, in-so-far as it is sensible to do so, bringing down force levels in the Province to a more sustainable level. I have suggested how this should be done and I hope that you can agree to my proposals. We shall, of course, always be prepared to help in an emergency with both infantry (the Spearhead battalion can be deployed within 72 hours) and Royal Engineers. But we must resist commitments becoming open-ended.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Douglas Hurd and to Sir Robert Armstrong.

Yours ever,

George

George Younger

Situation: IRELAND A 21.

SECRET

File SRWAJV

bc PC

25

10 DOWNING STREET

LONDON SW1A 2AA

Subject.

2 October 1986

From the Private Secretary

cc Master

Dear David,

THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

The Prime Minister held a meeting this afternoon to consider the proposal in the Northern Ireland Secretary's minute of 18 September to introduce three-judge courts for a limited range of cases in Northern Ireland, together with the comments made by a number of colleagues. The Lord President, the Lord Chancellor, the Foreign and Commonwealth Secretary, the Home Secretary, the Northern Ireland Secretary, the Attorney General and Sir Robert Armstrong were present.

The Northern Ireland Secretary said that lack of confidence in the administration of justice in Northern Ireland was a real problem, which was not limited to the Nationalist community. It was shared to some extent by the Unionists and internationally, with implications for extradition from third countries. The Government were committed by Article 8 of the Anglo-Irish Agreement to seek measures to deal with the problem. It arose most acutely over the admissibility of uncorroborated accomplice evidence ("supergrasses"). He had considered the possibility of action on this point but had concluded that it was vital not to handicap or circumscribe the security forces and prosecuting authorities. He had therefore turned his attention to three-judge courts. Proposals for such courts had been mooted since 1972 and there had been some indirect support for changes in this direction in the report of Sir George Baker. He had concluded there was a case for agreeing to the principle of three-judge courts for certain scheduled offences, while carrying out a detailed study on how this could best be accomplished. This implied no criticism whatsoever of the performance of the Northern Ireland judiciary. While his recommendation stood on its merits, there was also an Irish dimension which was relevant. The Irish Government clearly attached great importance to the issue and doubted their ability to get ratification of the European Convention on the Suppression of Terrorism through the Dail without some progress on three-judge courts.

The Lord Chancellor said that he stood by the views expressed in his minute of 22 September. Ideally he would like to see a return to jury trials but there was no prospect of this. Nor did there appear to be any viable

SECRET

alternative to Diplock courts. The united view of all those connected with the administration of justice in Northern Ireland was that there was no juristic case for three-judge courts. Nor would he be in a position to make the necessary practical arrangements to staff them. He regarded the Irish Government's intervention in the matter as ill-considered.

In discussion it was acknowledged that Diplock courts undermined Northern Ireland's reputation internationally and made us vulnerable to criticism in the United States and elsewhere. We should not assume that, just because they existed, they could never be changed. The Irish Government's intervention in support of three-man courts only added to the difficulties of change. There was no evidence to sustain their assertion that a majority of Northern Ireland judges were in favour of three-judge courts. Nonetheless, we should seek ways to let them down lightly, and should consider whether there were other changes in the administration of justice which we could make, which the Irish Government would see as helpful. The Attorney General's intention, already announced, to certify a greater number of cases for jury trial should be helpful in this respect. It might also be possible to adjust procedures for civil cases so as to make more judges and deputies available for trials of scheduled offences, thus reducing the backlog of cases. The Lord Chancellor would examine the scope for this.

The Prime Minister said that there could clearly be no question of agreeing to three-judge courts against the advice of the Lord Chancellor, the Law Officers and the Northern Ireland judiciary. The Irish Government would have to be informed that we were unable to proceed on this point. But in conveying this news, reference should be made to other steps being taken or under consideration to strengthen confidence in the administration of justice, which might be helpful to the Irish Government in securing the ratification by the Dail of the European Convention on Suspension of Terrorism. A message to the Irish Government should be prepared and its text agreed with the Law Officers.

I am copying this letter to John MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Tony Galsworthy (Foreign and Commonwealth Office), Stephen Boys Smith (Home Office), Michael Saunders (Law Officers' Department) and Michael Stark (Cabinet Office).

Yours sincerely,
Charles Powell

CHARLES POWELL

David Watkins, Esq.,
Northern Ireland Office.

SECRET

24

PRIME MINISTER

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

There is a meeting tomorrow to discuss the Northern Ireland Secretary's paper on three-man courts. The Lord President, the Lord Chancellor, the Foreign Secretary, the Northern Ireland Secretary, the Home Secretary, the Attorney General and Sir Robert Armstrong will attend.

There are copious minutes in the meeting folder, which you have already read. The Law Officers and the Lord President are firmly opposed to three-man courts. The Foreign Secretary is in favour (though recognises that you cannot go against the Law Officers), so apparently is the Home Secretary.

You will want to let Mr. King introduce his proposal. I have spoken to him. He understands that his proposal will be turned down. He will stress the need to let the Irish down lightly. You could then ask the Law Officers to put their views. You will then be able to say that we clearly cannot move in the face of their professional advice. The conclusion of this part of the discussion seems bound to be that we should not move to three-man courts.

You will want to move on to consider how to handle this matter with the Irish, in the context of their ratification of the Convention of the Suppression of Terrorism. On the one hand, they have a moral obligation to ratify without any quid pro quo from us. Their record of living up to their obligations on cross border security cooperation is poor. On the other hand, Article 8 of the Anglo-Irish agreement does commit us to seek measures to improve confidence in the administration of justice. There is no great gain for us in endangering Dr. Fitzgerald's position (though it is pretty much at risk anyway). Nor do we particularly want a confrontation in Anglo-Irish relations on the anniversary of the agreement. It is surely worth examining therefore whether there are any

SECRET

other more modest changes related to the administration of justice in Northern Ireland which we think desirable in their own right, which might be announced in the near future and would incidentally be helpful to the Irish government. I don't think that the Law Officers can credibly argue that the administration of justice in Northern Ireland is incapable of any improvement at all.

CDP

Charles Powell
1 October 1986

Re minutes from RTA immediately below arrived late tonight.

JA1BAQ

PERSONAL AND CONFIDENTIAL

Ref. A086/2749

MR POWELL

Anglo-Irish Relations

The Government Secretary in Dublin, Mr Dermot Nally, rang this morning. He said that the Taoiseach was anxious that a message should be conveyed from him to the Prime Minister. The Taoiseach would like to tell me himself what he wanted to say to the Prime Minister, so that I could convey it to the Prime Minister directly. The Taoiseach then took up the conversation.

2. The Taoiseach said that a decision had been taken in Cabinet Committee in Dublin, and would be confirmed by the Cabinet tomorrow, to proceed (subject to one condition, to which I will return later) to the introduction in the Dail of legislation to ratify Irish accession to the European Convention on the Suppression of Terrorism (ECST). There would be no reservations under Article 13 of the Convention.

3. The Taoiseach went on to say that the offences to which the Convention applied were specified in Article 1 of the Convention. In addition, Article 2 of the Convention enabled a signatory to add to the range of offences to which the provisions of the Convention would apply. The Irish Government would want to add certain offences under those arrangements in their legislation, but they would need to accompany that with wording in the legislation on the lines of Article 13 of the Convention, applicable to the additional "unspecified" offences only, so as to avoid a constitutional challenge to the Bill as a whole. The depoliticisation of the offences specified under Article 1 was fully accepted, and the Supreme Court would accept that adherence to the Convention in respect of those offences

was not unconstitutional in Ireland. In relation to the additional offences, however, the Supreme Court might take the view (on a challenge) that the legislation fettered the discretion of the Supreme Court, unless the legislation included wording on the lines of Article 13; and, if it did not include such wording, there would be a risk that the Supreme Court would declare the whole Bill unconstitutional because of this provision. It would be in order to avoid that danger that wording like that of Article 13 would be included in the Bill in relation to the additional offences to be included.

4. The Taoiseach said that the legislation would not include any requirement of prima facie evidence for extradition. What he described as "a small political party" had been committed to requiring prima facie evidence, but he was reasonably satisfied that the party concerned would drop that request. It would be necessary for it to be known that extradition papers would be vetted by the office of the Director of Public Prosecutions.

5. The Taoiseach said that the Irish Government was thus seeking to act in complete good faith in relation to ratification of the ECST. But he went on to say that he was in no doubt that the legislation would not pass unless there were changes in the system of the administration of justice in Northern Ireland to improve the confidence of the minority community in that system, and specifically a move towards the introduction of three-man courts.

6. The Irish Government were willing to accept that three-man courts should be confined to extraditable offences and certain other very serious offences: that would reduce the number of additional judges that would be needed. The Taoiseach said that he understood that Lord Lowry had told the Secretary of State that the Northern Ireland judiciary were unanimously opposed to the introduction of three-man courts. He had reason to believe that this was not the case. His understanding was that there

NOIAAS

had been no formal consultation of the Northern Ireland judiciary, and that three of the High Court judges were in favour of three-man courts for non-jury trials and two were neutral on the subject. He suggested that the Government should take steps to ascertain for certain what was the position of the Northern Ireland judges on the matter.

7. If there was a decision to move in the direction of three-man courts, the Irish Government would be very willing to be as helpful as possible in relation to its presentation. They would certainly wish to avoid any reflection on the conduct of the courts in the past or on the courage and integrity of the Northern Ireland judiciary.

8. Turning to cross-border co-operation, the Taoiseach said that agreement had already been reached on a number of things. He instanced:

- Regular meetings between the Chief Constable of the Royal Ulster Constabulary (RUC) and the Commissioner of the Garda.

- The need for improved surveillance south of the border.

- Strengthening of the relevant group of the Garda (I think he said Unit 143).

- Improvements in communications between the two police forces and in computerisation.

9. On two matters that had been in abeyance, the Irish side were now able to make a move:

- It was agreed that there should be regular monthly meetings between divisional Commanders and Superintendants on the border.

- It was recognised that detectives in the Garda lacked training in surveillance work. It had been suggested that they should have five months of training. That would take them off the job for too long. But it was now agreed that they should undertake training for a period to be determined, and that the staff concerned should be those who had already had some preliminary training of which the RUC were aware.

10. The Taoiseach said that they had not until this morning received in Dublin, via the Secretariat of the Intergovernmental Conference, from the Secretary of State a list of a number of matters on cross-border security co-operation which had not been dealt with. There had previously been suggestions that there were such matters, but attempts by the Irish Government to obtain a clear statement of what those matters were had not hitherto been successful. This was the first time that they had had a clear statement at political level of the matters not dealt with. The list would now be strenuously and seriously considered, and the Taoiseach said that he would be personally supervising that consideration. He suggested that the matter should be discussed at next week's meeting of the Intergovernmental Conference. It could well also be useful that there should be a separate meeting between the Secretary of State and the Chief Constable on one side and the Minister of Justice and the Commissioner of the Garda on the other.

11. In conclusion the Taoiseach stressed the political importance for him of a move on three-man courts by us, if he was to be able to get through his Parliament the proposed legislation to ratify Irish accession to the ECST.

NOIAAS

12. The Irish Ambassador subsequently called upon me, at his request, to leave with me a copy of the notes from which the --- Taoiseach was speaking. I attach a copy herewith.

13. I am sending copies of this minute to the Private Secretaries to the Lord Chancellor, the Foreign and Commonwealth Secretary, the Home Secretary, the Secretary of State for Northern Ireland and the Attorney General.

RCA

ROBERT ARMSTRONG

1 October 1986

Notes on which the Taoiseach based his telephone conversation with Sir Robert Armstrong - 1 October 1986

A. I can confirm to you our willingness to accept that three-man courts could be confined to extraditable offences and other very serious offences, possibly to be defined in terms of length of maximum sentences. The details are open for discussion. This could significantly reduce the number of judges needed.

B. Leaving aside the fact that the judges resolved unanimously in June 1985 that they would abide by the will of Parliament and so notified the Prime Minister, we believe that information in London that there is a 'monolithic' objection by the northern judiciary to three-man courts is not a correct representation of the position and that no formal collective consultation with the judges has taken place. We believe that three judges are positively in favour and that two others are neutral. Surely the actual position should be verified before a decision is taken on what could be a false assumption of monolithic opposition?

C. We would wish to be helpful with the presentation of this matter. We recognise that it would be most undesirable that a change in the number of judges be represented as reflecting in any way on the court in the past, especially in view of the appalling risks judges face, and the fact that a number have in fact been murdered or been the subject of murder attempts. We would ourselves present this whole matter positively, and would be willing to reflect with your government as to how best this can be done.

D. There are a number of misunderstandings about our position on extradition legislation, at civil wervice and lawyer levels. We want to make the following points clear - they have been cleared by our Cabinet Committee and will be cleared by our full Cabinet on Thursday -

1. We shall make no reservation under Article 13.

2. In relation to Article 2, we wish this to be applied, as the range of offences under Article 1 is too narrow, but its inclusion must be accompanied by wording paralleling wording of Article 13, because, apart from the possibility of constitutional challenge in specific cases, it is on the cards that in light of the debate in the Dail and constitutional queries by the Opposition, and possibly by academics in parallel public debate, the President may feel obliged constitutionally to refer the whole Bill to the Supreme Court. Under this procedure, (as distinct from a reference of a particular section, or a challenge in a specific case), any defect in the Bill would lead to the disaster of the whole Bill being found unconstitutional. In view of the wording of some past judgements of the Supreme Court, a real possibility exists that while de-politicisation of Article 1 offences would be upheld, as they are specified in the International Convention, an attempt to remove the Supreme Court's discretion in relation to unspecific offences under the Article 2 general category might fail - and in a general reference bring down the whole Bill. Neither of us can afford this risk. But no reservation will be entered on ratification.

3. We shall not include in the Bill any requirement for certification that a prima facie case exists and we will accept arrangements under which in terrorist cases, papers will be cleared by the DPP's office. This will cause problems in the Dail because of the perception that in a number of cases extradition has been sought

where a prima facie case did not exist. I am satisfied that one political party which is publicly committed to the view that this Bill should require a prima facie case to be shown will now drop this requirement, and also the idea of a requirement for a certificate. It would of course be necessary for it to be known that, in these cases, papers would be vetted by the DPP's office, but as there has been criticism in Britain of five cases, such a statement would be seen as an assurance of efficient extradition in future, rather than as part of a 'deal' with us.

4. A rule of speciality requirement (ie that no other charges could be preferred) would not be in the Bill, but could be substituted by a public statement of a formal understanding that such charges would be preferred only after consultation with the Irish authorities.

5. There would be no provision in the Bill about questioning after extradition.

It will be seen from these five points that we are not holding back on any of these issues on which we can facilitate extradition without introducing a real danger that the whole Act would be found unconstitutional on reference of it by the President to the Supreme Court. In the common interest we could not go further, and we are proposing to act in complete good faith in all respects. But all this is possible only if the proposed changes in the court system in Northern Ireland are made in respect of extraditable and other serious offences carrying heavy sentences. The legislation simply would not pass here without this.

E. There appear to be misunderstandings - or in some cases persisting disagreements at police level - about cross-border police cooperation.

Among the matters that have been agreed, according to our records are the following:

1. Regular meetings between Assistant Commissioner/Assistant Chief Constable and Border Supts/District Superintendents.

2. Heads of intelligence to meet regularly.

3. The level of strengthening of special detective units and surveillance unit.

4. Substitution by either side for temporary depletion of forces on the other.

5. Strengthening of Dublin Special Detective Unit dealing with terrorism to 143.

6. Arranging for compatible and secure telephone, radio and fax equipment.

7. Harmonisation of computerisation.

There are also other matters which have hitherto been in abeyance but which we are now in a position to agree:

1. It is now agreed that regular monthly meetings will take place between Divisional Commanders and Chief Superintendents.

2. A training programme is being established for detectives being allocated to surveillance work. The training will be undertaken by staff who have themselves received the type of training that has been referred to by the RUC. We are now studying very seriously further matters, including issues brought to my attention only this morning after the meeting between Secretary of State King and Lillis yesterday evening and I am examining these matters personally with the Minister for Justice.

F. Finally, in view of the overwhelming importance of these issues, I would hope that no negative decision would be arrived at tomorrow on your side on the question of three-man courts. I have in mind writing briefly to the Prime Minister on this point.

SECRET AND PERSONAL

23

Ref. A086/2750

PRIME MINISTER

I have sent to you separately a note of a message which the Taoiseach asked me to convey to you when he spoke to me on the telephone this morning.

2. There was a second part of the message, which the Taoiseach specifically asked should be for your eyes only. I am not therefore sending copies of this minute to anyone else.

3. The Taoiseach said that he believed that his Government would be able to continue in office until after Christmas, and that (subject to a move on three-man courts by us) legislation for the ratification of the European Convention on the Suppression of Terrorism (ECST) would pass through the Irish Parliament by Christmas. He had reason to think that he could count on the support of "a small political party" - by which I presume he meant the Progressive Democrats - on that legislation. But he expected that he might well be driven to a general election shortly after Christmas; that would be on economic issues, and particularly on the budget.

4. The Taoiseach went on to say that he did not believe that Fianna Fail would win an overall majority in an election, but it was possible that Fine Gael would not be able to put together a government that could command a majority in the Dail, even in coalition with another party.

5. There had recently been an important change in the position of Fianna Fail, and of Mr Haughey in particular, on the Anglo-Irish Agreement. Mr Haughey had made it clear in public

SECRET AND PERSONAL

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speeches that, if he came back into office, he would regard himself as bound by the Anglo-Irish Agreement and would continue to work it, though he would look at the possibility of renegotiating it. Dr FitzGerald believed that, once Mr Haughey was back in office, he would probably not in practice try to renegotiate the agreement when he took stock of the difficulties in trying to do so. Dr FitzGerald therefore believed that the Agreement was secure, particularly in view of the things which opposition spokesmen on Northern Ireland affairs had been saying in the United Kingdom.

6. But it would be politically impossible for Mr Haughey to introduce legislation to ratify Irish accession to the ECST. If such legislation were in place by the time Mr Haughey became Taoiseach, he would not seek to repeal it or to come out of the ECST; but he could not introduce it.

7. There was thus a political opportunity to introduce and pass legislation for the ratification of the ECST, which would be very unlikely to recur if Mr Haughey returned as Taoiseach after a general election.

8. The Taoiseach said that it would be "a tragedy" if the opportunity was lost. The ratification of Irish accession to the ECST would "put the coping stone" on the Anglo-Irish Agreement. Failure to ratify would be a serious setback for the process which you and he had started and carried forward.

9. The Taoiseach stressed once again that it was politically essential for him to have some progress on three-man courts in Northern Ireland, if the ratification legislation were to pass in the Irish Parliament. He reminded me that it had been made clear in the discussions leading up to the Hillsborough Agreement that the ratification of Irish accession to the ECST would depend upon significant progress in improving the administration of justice in Northern Ireland. He was very

anxious that there should be no recriminations as between him and you, if in the event ratification legislation failed because we had not been able to make even a limited move in the direction of three-man courts.

10. The Taoiseach said that he was putting the ratification legislation top of his priorities, despite the effect that he recognised that that could have on his own political situation. He was clearly very anxious that you should be in no doubt about that.

11. Because of the great political importance, to both Governments, of sustaining the Anglo-Irish Agreement and the improvement in Anglo-Irish relations which it represented, the Taoiseach very much hoped that you would take no final decision on the introduction of three-man courts without first having had an opportunity for a further exchange of views with him. He would very much want to talk to you himself, if it seemed likely that an adverse decision was going to be taken.

12. The Taoiseach has now sent you a personal message which --- underlines this last point. I attach a copy of that message herewith.

RTA

ROBERT ARMSTRONG

1 October 1986

NOIAAT

Text of Message of 1 October, 1986 from the Taoiseach, Dr Garret FitzGerald TD to the Prime Minister and Minister for the Civil Service, the Rt Hon Margaret Thatcher MP

You will be aware of the information I have conveyed to Robert Armstrong in relation to our position with regard to 3 Judge courts in Northern Ireland, another matter which I asked him to speak to you about, cross border security cooperation (which I am at present examining personally with the Minister for Justice) and the Extradition Bill now in preparation here. This Bill will enable us to Ratify the Convention without reservation and will also secure the most effective possible system of extradition of terrorists.

You and I share a deep concern about these latter issues. I believe we are now close to being able to secure these objectives before the end of the year. I would hope that early progress can be made in clearing the way politically for this. If in your view obstacles remain I very much hope that we will have an opportunity of discussing them together before final decisions are made on either side.

PERSONAL AND CONFIDENTIAL

Prime Minister
CDP.

Ref. A086/2751

PRIME MINISTER

Anglo-Irish Relations: Northern Ireland
Meeting of Ministers: Thursday 2 October 1986 at 4.00 pm

Three-man Courts

The main purpose of the meeting is to discuss the proposals by the Secretary of State for Northern Ireland, in his minute of 18 September, that we should announce that we are prepared in principle to introduce three-man courts, in the first instance for certain scheduled offences, in Northern Ireland.

2. The Lord Chancellor and the Law Officers have minuted you opposing this proposal; the Foreign and Commonwealth Secretary has on balance supported, not only on political grounds but also on the ground that the legal and practical problems are not so great as have been suggested.

3. I have sent to you separately accounts of the message which the Taoiseach has asked me to convey to you on this subject.

4. On one hypothesis the Irish Government are simply using the introduction of legislation to ratify Irish accession to the European Convention on the Suppression of Terrorism (ECST) as a lever to extract the greatest possible price from us. On another hypothesis, it could be that some members of the Irish Government are not particularly keen to ratify Irish accession to the ECST, and reckon that, if they demand of us a price that they know we cannot (or will not) pay, they can blame us for the failure of the ratification legislation in the Dail (or for their own failure to introduce it at all).

PERSONAL AND CONFIDENTIAL

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5. I should for myself be inclined to acquit the Taoiseach of either of these cynical motives. He has all along - since before Hillsborough - made clear his view that ratification of Irish accession to the ECST would depend upon significant progress in improving the administration of justice in Northern Ireland as the nationalists see it; and his own commitment to the idea of three-man courts is of even longer standing than that.

6. The argument of principle is that, in cases where trial by jury is not possible, justice is more likely to result if the evidence is assessed and weighed by more than one person. The Taoiseach clearly sees that argument as being reinforced by the outcome of the Black case.

7. In political terms, my impression is that the Taoiseach sees himself as having only a few months to run before losing office, and sees the ratification of Irish accession to the ECST as the final great contribution he can make to the process of improving the prospects for peace, stability and reconciliation in Northern Ireland by improving relations between the British and Irish Governments and by securing changes in Northern Ireland which will reconcile the nationalist community to the continuance of the union for the indefinite future.

8. There is certainly no doubting the very high political importance which he is attaching to this matter.

9. If it is decided that we should make no move in the direction of three-man courts in Northern Ireland, you may like to ask at the meeting whether there is scope for any other change or changes in the administration of justice in Northern Ireland which we could propose as a substitute for three-man courts. There are two possibilities which you might like to raise, if others do not:

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(a) We might be able to offer an end to "supergrass" trials - trials in which prosecution and conviction are based on the uncorroborated evidence of a single accomplice, who turns Queen's evidence. This might in practice be more significant in its effect than the introduction of three-man courts, and could (I understand) be introduced without legislation by means of a directive from the Attorney General to the Director of Public Prosecutions in Northern Ireland.

(b) It might be possible to propose an end to multi-defendant trials - the batch processing in the court of anything up to two dozen people at a single trial. Presumably, however, this would have resource implications not unlike those of the limited introduction of three-man courts.

10. Whatever the outcome of the meeting, you will wish to consider what the next step should be. In view of the Taoiseach's message, you will need to consider whether to offer him some kind of informal meeting, or to speak to him on the telephone (we now have secure communications with the Taoiseach's office, though they are not totally satisfactory and it may in any case be difficult to deal with other aspects of this subject in a telephone conversation), or to send him a message (or an emissary).

Cross-border Co-operation

11. The meeting was not called to discuss cross-border security co-operation, though you have suggested a separate meeting on that subject. The contents of the Taoiseach's message may well mean that it comes up. The message suggests that the Taoiseach is making a serious effort to deal with what we have seen as deficiencies in that field. We have to face the fact that there is a limit to what the Irish can do: the border is as

long on their side as it is on ours, but the resources available to the Irish are only a fraction of the resources available to us. Within those limits they really are trying hard.

Roundtable Conference on Devolution

12. The Secretary of State for Northern Ireland may also raise the possibility of trying to get the unionists into some kind of round table discussion about the establishment of devolved government in Northern Ireland. The latest suggestion is that the Government should indicate to the unionists that, if agreement could be reached upon devolution on a widely acceptable basis, the two Governments would undertake a review of the working of the Intergovernemental Conference set up under the Anglo-Irish Agreement. The Agreement already provides that a range of matters now dealt with by the Intergovernmental Conference would cease to be dealt with there in the event of devolution. It also includes provision for review of the working of the Conference at the request of either Government. The new proposal brings the two ideas together, and contemplates a commitment by both Governments to a review of the working of the Conference if devolution was agreed - a review which (implicitly) might not necessarily be confined to the immediate consequences of devolution. I attach a draft of the way in which such a proposal might be expressed.

13. I doubt whether a proposal of this kind would be sufficient to bring the unionists to the conference table: they have been insisting on suspension of the Anglo-Irish Agreement as a condition of talks about devolution. But the signals which came from the unionists after Sir Frederick Catherwood's recent

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speech were conflicting, and an initiative of this kind might help to focus their minds. In order to avoid another open offer and rebuttal, it might be preferable to try this idea on unionist politicians privately through an intermediary.

RA

ROBERT ARMSTRONG

1 October 1986

NOIAAU

The Government welcomes the readiness of the leaders of the constitutional parties in Northern Ireland to engage in talks about the establishment of devolved government in the Province. At an appropriate stage the Government would be willing to participate in these talks which would, of course, be outside the framework of the Anglo-Irish Agreement.

That Agreement provides that if it should prove possible to achieve and sustain devolution on a basis which secures widespread acceptance in Northern Ireland a wide range of matters now falling to be dealt with by the Intergovernmental Conference would be removed from its consideration.

In that event the British and Irish Governments will, in accordance with Article 11 of the Agreement undertake a review of the working of the Conference.

Ref. A086/2554

NOTE FOR RECORD

Mr Dermot Nally, Secretary to the Irish Government, was in London on 10 September 1986 and came to see me, to resume contact after the summer holiday.

2. We compared notes about the situation in Northern Ireland. I said that the marching season had passed off more quietly than we had feared. But we did not now foresee an improvement in the political climate for Northern Ireland. Unionist opposition to the Anglo-Irish Agreement was undiminished. The unionists remained united in that; but in little else. Mr Molyneaux was refusing to talk to the press. There were still "integrationist" voices to be heard, but "integration" was not seen as a feasible way forward in London. Deputy leaders of the Official Unionist Party and the Democratic Unionist Party had both made public speeches in which they suggested that, if the Anglo-Irish Agreement could not be suspended or abrogated, then unionists would have to consider independence. We did not think that that was much more than talk: we doubted whether the idea of independence had been at all thought through. On the other hand, though there were other people who appeared to favour devolution, there seemed to be no prospect of success for an early initiative in that direction. It seemed likely that on the constitutional front matters would go on for the time being very much as they were, while unionist opinion thrashed around and sorted itself out.

3. Mr Nally said that that was very much the judgment in Dublin too. They thought that the unionists were unhappy about the Agreement but confused and without direction so far as the future was concerned, and had to be given more time in which to do some serious thinking, so that they could sort themselves

out. The difficulty was to see where the serious thought was going to come from.

4. Mr Nally said that, in the Republic, the Dail would resume on 26 October. At some stage Fianna Fail would put down a motion of no confidence: this might happen quite early, but it might be postponed for a time, since Mr Haughey would want to be able to muster his full strength for the vote, and his party was at present one seat short, with by-election pending. The Labour Party conference was due to be held towards the end of October, and continued membership of the Government coalition would be an issue at that conference. Mr Nally thought, however, that, even if the Labour Party voted against continued membership of the coalition, the present Labour Party members of the Government would remain in office until the General Election, as they were committed to do: the withdrawal from the coalition would take effect when the Election was called, and the Labour Party would fight the election independently of Fine Gael. Nothing was certain in Irish politics, but on the whole Mr Nally thought that the Taoiseach would be able to last out the course and continue in office until April or June 1987. He agreed, however, that pre-electoral considerations would loom increasingly large from now on.

5. On the Anglo-Irish Agreement, I said that the British Government's commitment to it remained firm, and we were still thinking in terms of further developments in the intergovernmental conference in the coming weeks: Ministers would want to demonstrate that unionist claims that they had succeeded in frustrating the implementation of the Agreement were not well-founded. But the unionist reaction would be a factor which would enter into the British Government's calculations: the Government was likely to want so far as possible to avoid exacerbating the problems of Northern Ireland between now and the General Electionin the United Kingdom, whenever that might be.

6. Mr Nally said that the legislation for the ratification of Irish accession to the European Convention on the Suppression of Terrorism had now been drafted and was ready for introduction when the Dail resumed. The Taoiseach remained personally committed to ratification, and wanted to ratify without derogations or reservations. But this would be a measure which would not be easy to get through the Irish Parliament. It would be opposed by Fianna Fail, and there could even be a few supporters of the Government coalition who would be reluctant to vote for it. The Taoiseach had made it clear in the discussion leading up to the Anglo-Irish Agreement, - and this was reflected in the Communiqué issued on 15 November 1985 at Hillsborough - that, though there was no formal conditionality, progress in improving confidence in the administration of justice in Northern Ireland was the background against which Irish Government proposal for the Ratification of the European Convention would be considered and discussed in the Republic. The Taoiseach's political position was even more sensitive now than at the time of Hillsborough. He was convinced that it would not be possible to get the Ratification legislation through the Irish Parliament unless there was significant progress on improving the administration of justice in Northern Ireland. It had reached the point at which, unless he knew by 10 October that there would be some such progress, the Taoiseach could well conclude that the ratification measure would stand no chance and that it would be better not to introduce it and court defeat. It remained the Taoiseach's position that effectively the only measure which he saw as constituting sufficient progress was a commitment to the introduction of three-man courts in Northern Ireland for at least some offences for which trial by jury was now excluded.

7. Mr Nally said that the Taoiseach understood the difficulties for British Ministers over agreeing to a measure which might appear to reflect lack of confidence in the Northern Ireland judiciary. He suggested, however, that the strength of

that argument had been somewhat weakened by the recent decision of the Northern Ireland Court of Appeal in the Black case. Black was a supergrass. In the court at first instance the prosecution had relied almost entirely on Black's evidence, and the assessment of Mr Justice Kelly (who tried the case) of Black's evidence was crucial to the outcome. Mr Justice Kelly had stated in his judgment that in his account of the incidents and their participants, Black was one of the best witnesses he had ever heard. The Court of Appeal, however, with Lord Lowry in the lead, found that Mr Justice Kelly had failed to make a proper assessment of Black. In their judgment they said that the trial judge, despite his undoubted manner, his great experience and the enormous care which he took over the case, had greatly overestimated the honesty as a witness of the accomplice Black.

8. In other words, Mr Justice Kelly had been led astray by the supergrass, and as he had been sitting alone and without a jury there had been no counter-balance to his opinion. It was reasonable to assume that, if he had been sitting with two other judges, that would have been less likely to occur.

9. This supported the Irish Government's general view that, in cases where by definition there could be no jury, to have more than one judge on the bench would improve the chances of fair and balanced assessment of the evidence.

10. In political terms, the Irish Government thought that the difficulties of introducing three-man courts into the judicial system in Northern Ireland could be exaggerated. It was after all the case that Mr Paisley himself had more than once spoken in favour of three-man courts.

11. I said that I would report what Mr Nally had said to me about the Taoiseach's position on this matter. I understood and would make it clear that the Taoiseach's decision whether to go

ahead with the introduction of the Ratification Bill could be crucially affected by whether or not the British Government indicated by 10 October readiness to move to three-man courts for at least some offences in Northern Ireland. But I stressed the considerable difficulties which I foresaw. I knew that the Taoiseach was aware of the strength of feeling against three-man courts in the Northern Ireland judiciary (and especially Lord Lowry); and I thought he was right in believing that British Ministers would be reluctant to take a measure which implied that they lacked confidence in the courage and impartiality of the Northern Ireland judiciary.

12. Mr Nally asked what we were thinking about future meetings between the Prime Minister and the Taoiseach. He said that the Taoiseach was not pressing for a meeting, and recognised that a meeting might create difficulties for the Prime Minister in relation to the unionists. As against that, it was nearly a year since they had had a formal bilateral meeting, and it would be undesirable for the impression to be created that they were reluctant to meet.

13. I said that I had not had the opportunity of discussing this with the Prime Minister recently. She had a very busy schedule in the coming weeks, and I did not think that she would want to press for a meeting, unless there was some positive purpose in having one. She and the Taoiseach had, after all, met a number of times since Hillsborough in the margins of the European Council. But I knew that Dr FitzGerald came to London from time to time on private business or to undertake speaking engagements, and I thought that the Prime Minister would be very ready to see him for a short call during the course of such a visit. Indeed, a short and informal meeting of that kind might reduce speculation about unwillingness to meet and pressure from the media or elsewhere for a full bilateral meeting.

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CC6/86

Prime Minister

This expands on the views which the Foreign Secretary put to you last night

CDP
30/9.

PM/86/064

PRIME MINISTER

The Administration of Justice in Northern Ireland

1. As I explained when we met last night, I believe we need to think very carefully about the proposals put forward by Tom King for modifying the Diplock courts (his minute to you of 18 September).

2. I recognise, of course, the strength of feeling that underlies the objections expressed by the Lord Chancellor and the Attorney General, reflecting the views of the Lord Chief Justice of Northern Ireland. But the argument that introducing this reform would cast doubt on the integrity of the judicial process hitherto is effectively an argument against any significant change in any subsisting procedures, even where (as I believe to be the case with three judge courts) the change could well be justified on its merits. I believe we need to think very carefully about the wider implications of the decision which faces us before accepting the arguments of that kind which have been put forward.

3. Despite the continued opposition of the Unionist community, the Hillsborough Agreement is still seen as a profoundly worthwhile achievement. We always knew it would take time to bear fruit, and that patience and hard work would be needed to make it work. Even on this timescale, we

can point to some progress: the political advance of Sinn Fein has been halted; the impartiality of the Royal Ulster Constabulary has been well demonstrated. You were of course right last night to point out that progress on cross-border cooperation has been slow; this is in large measure due to shortage of resources on the Irish side, aggravated by the personality of the Irish Commissioner of Police. Given time the latter at least will change. But already, structures are in place which in the longer term can only be beneficial, and there has been significant improvement in the climate of confidence between the RUC and the Garda. The Irish Government has by and large accepted our own measured approach to the implementation of the Agreement, as Mr Barry's positive speech to the UN General Assembly last week demonstrated. There are better prospects for a continuing joint approach to the problem than there have been for many years.

4. I fear that even these worthwhile achievements could be jeopardised unless we take seriously our commitment under Article 8 of the Agreement, spelt out in greater detail in the Hillsborough Communique, to seek "measures which would give substantial expression" to the aim of promoting public confidence in the Administration of Justice in Northern Ireland. You will remember from your own discussions with him how much importance Garret Fitzgerald has attached to this aspect from the very beginning of the negotiations leading up to the Hillsborough Agreement.

5. The Irish initially hoped that we could agree to the establishment of joint courts. That was never possible. Broadening the composition of the Diplock Courts has been widely canvassed as the most desirable alternative, and one which would involve no infringement of British sovereignty.

Indeed it was at an earlier stage supported by Dr Paisley himself. The Government's readiness to contemplate a move of this kind is increasingly seen, not only by the Irish Government and the minority community in the North, but also by much responsible opinion in Great Britain, as important evidence of the Government's continued determination to honour its obligations under the Agreement.

6. It is important to remember that the present single judge courts were introduced in 1973 as a temporary expedient. They have worked extraordinarily well in the face of great difficulties, and I would pay my tribute to those who have manned them. But they have all along represented a derogation from trial by jury; they are exceptional for that reason; and they were introduced only after great hesitation, not least on grounds of legal principle. However unfairly, they are a major target of criticism both domestically and internationally, and their reform on the lines proposed (in the absence of an early return to jury trials) would be widely welcomed. It would help us in the task of countering pro-IRA propaganda in the United States and elsewhere overseas; and it would almost certainly facilitate the extradition of fugitive offenders. Even under the UK/US Supplementary Extradition Treaty it is still possible to deny extradition if the judge can be persuaded that a fair trial is not available in the requesting state. Similar considerations apply in other countries, as currently in the Netherlands.

by whom?

No

7. The link that is perceived between three-judge courts and Irish ability to ratify the European Convention on the Suppression of Terrorism is an additional, and tactical, argument for making the move now if possible in time to enable the Taoiseach to get the ratification Bill through

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the Dail without the attachment of conditions which would negate its effect. But in my view this is less important than the benefits which the reform would bring in terms of maintaining and strengthening public confidence in the administration of justice in the United Kingdom.

8. The Lord Chancellor in his minute puts considerable stress on the practical problems involved. Some of them of course are very real - most notably the problem of judicial manpower. If it is the case, as we are told, that the pool of available barristers in Northern Ireland has increased considerably since 1984 when Sir George Baker reviewed the position, then that might help. Much more useful, as it seems to me, is the Irish willingness to see the change confined only to a relatively small group of cases. Moreover as Sir George Baker pointed out, we had three-judge courts of first instance in India; and the experience of the Special Criminal Courts in the Republic of Ireland, where judicial traditions are similar to our own shows that a collegiate court of first instance need not face impossible operational difficulties. The principle of several members of a court delivering a single opinion is far from uncommon in our own system, from Quarter Sessions Appeals Committees to the Privy Council. My own belief is that, if the political decision to make the change were taken, the practical and technical difficulties would be overcome.

9. This is not, in my view, a case of the Irish once again refusing to be satisfied with what we have given them, and pressing for more. The obligations on the Intergovernmental Conference - that is to say, on the two Governments jointly - to look for reforms in the administration of justice is clearly spelt out in the Agreement, and we have always recognised that the courts were the crucial area in this respect. If we rule out now a favourable response to Tom King's suggestion, then I fear we shall send the wrong

signal to both communities in Northern Ireland and that an important opportunity of demonstrating our determination to continue to complement the Agreement gradually but steadily will have been missed.

10. If, in spite of these arguments, it is felt that the objections to modify the Diplock courts now must be regarded as overriding, then I hope we can keep the opportunity open for the future. Meanwhile, it will be important to try to find other areas of reform of the judicial system which might satisfy the requirements of the Agreement. I fear this will not be easy.

11. I am sending copies of this minute to the Secretary of State for Northern Ireland, the Lord President, the Lord Chancellor, the Attorney General, the Home Secretary and Sir Robert Armstrong.

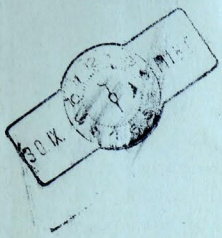
GEOFFREY HOWE

Foreign & Commonwealth Office
30 September 1986

IRELAND

SITUATION

PT 21



10 DOWNING STREET

We must have a formal meeting to discuss Sinclair's note.

Prime Minister

This report shows that cross-border security cooperation is a shambles. The Irish still lack the means - and perhaps the will - for effective cooperation. There are serious doubts whether the Irish can in practice deliver what they have agreed.

All the less reason for us to be making concessions on three-man courts.

CDP 26/9

SECRET (21)

MT

cafe

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

29 September 1986

Dear David,

SECURITY CO-OPERATION WITH THE IRISH REPUBLIC

The Prime Minister has seen the JIC's note (JIC(86)(N)110) on Security Co-operation with the Irish Republic. She is very concerned by the situation which it reveals. She would like a special meeting to discuss this and what can be done to remedy it. We shall try to set this up for later in the month.

I am copying this letter to Colin Budd (Foreign and Commonwealth Office), John Howe (Ministry of Defence), Stephen Boys-Smith (Home Office) and Sir Robert Armstrong.

Yours ever,

Charles Powell

Charles Powell

David Watkins, Esq.,
Northern Ireland Office.

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PRIME MINISTER

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

I have seen the Lord Chancellor's Memorandum to you dated 22 September. For the reasons he gives both I and the Solicitor General agree that the administration of criminal justice in Northern Ireland would be seriously harmed if the Northern Ireland Secretary's proposal were adopted. We also think that public confidence in the system would be lessened rather than increased, for the reasons given by the Lord Chief Justice of Northern Ireland in his Memorandum to the Lord Chancellor of 4 August and his letter to the Northern Ireland Secretary dated 11 September, both of which were copied to me. I attach copies. We fully concur with each of these.

I wish to add that in my view the Black case is irrelevant to this issue. If there are serious disadvantages for the administration of justice in three-Judge courts (and there are), they are not lessened by the judgment in that case. Black illustrates the fairness of the present appellate system (the delay in hearing the appeal was due to the immense scale of the proceedings, the appeal hearing itself lasting from 13 January to 1 May and the judgment at first instance running to 423 pages). As the Lord Chief Justice himself said in the Appeal Court's judgment: "... experience in Northern Ireland has shown how much greater in a Diplock trial are the appellant's opportunities of persuading the court to interfere than when the appeal is from the sphinx-like verdict of a properly directed jury, which does not have to give reasons for its verdict." If the case points in any direction other than towards that fairness, it may be towards eschewing further prosecutions

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where the case depends mainly on the uncorroborated evidence of an informer. But that is a quite different issue.

I agree that we have to take account of what are nowadays called "perceptions" about the administration of justice. It is our opinion, however, that if this proposal is adopted, a most adverse "perception" will become widespread; namely, that notwithstanding the considered opinions of Diplock, Gardiner and Baker (the latter quite recent) the British Government in order to tempt the Republic into doing what they have already undertaken to do, and not for juridical reasons, has yielded up the principle of three-Judge courts in advance. And with the implication of more to come, for the proposed limitation to certain scheduled offences will apply only "in the first instance".

From our close acquaintance with those responsible for prosecutions in Northern Ireland, and with the Judiciary, we are sure that to adopt the proposal would have a very bad effect on morale - and therefore efficiency - in both quarters. We endorse in particular what is said by the Lord Chief Justice about the feelings of the Judges, upon whose steadfastness so much continues to depend.

I am copying this minute to the Lord President, Lord Chancellor, Foreign and Commonwealth Secretary, Home Secretary, Northern Ireland Secretary and Sir Robert Armstrong.

M.H

25 September, 1986

MEMORANDUM FROM LCJ OF N. IRELAND TO LORD CHANCELLOR

Non-jury trial of Scheduled Offences

INTRODUCTION

1. The mode of trial since 1973 has been by a single judge without a jury. Two-judge or three-judge courts ought to be resisted on three grounds, judicial, administrative and political, as set out below. I also refer to the following appendices:

1. Diplock Report 1972 paragraph 39;
2. Gardiner Report 1975 paragraphs 30-33;
3. Baker Report 1984 paragraphs 109-126;
4. Note dated 23rd May, 1973;
5. Note dated 15th November, 1983;
6. Copy letter L.C.J. to P.U.S., N.I.O., dated 4th August, 1986.

JUDICIAL GROUNDS

2. Our system is unsuitable for collegiate trial of fact, including rulings on admissibility and procedure. This drawback is greater if the presiding judge, as he should be, is merely first among equals.

3. Single judge trial is accepted in civil cases, where serious imputations are often made and very important issues must be resolved on a balance of probabilities, which increases the difficulty.

4. In a jury trial one judge already takes sole responsibility for two issues which may decide the outcome:

1. the existence of a case to answer; and
2. admissibility of evidence, including the statements of the accused.

He should continue to do so in a non-jury trial.

5. The different views which the members of a plural court could take on the matters in paragraph 4 would create irreconcileable difficulties in considering the evidence.

6. The need for the "safeguard" of a plural court is negatived by the paucity of examples of allegedly wrong or doubtful convictions and also by the unfettered right of appeal.

7. The argument of "safety in numbers" applicable to a lay jury, does not apply to a judge whose full-time duty is to reach conclusions upon evidence.

8. There is no true parallel between trial and appeal, where the matters for decision are legal propositions and the trial judge's performance.

9. Sole responsibility for a conviction is probably a greater protection for the accused than shared responsibility.

10. Trial by a plural court could result in superficial treatment of some issues or, alternatively, agonising and lengthy discussion, and could make it difficult to produce a judgment based on reasoning in which all or a majority concur. This could also lead to less detailed written judgments which would be less open to analysis on appeal to the detriment of appellants.

ADMINISTRATIVE GROUNDS

11. To provide enough plural courts would place an intolerable strain on judicial resources and eventually on the quality of the Bench. Nearly all the appointments would of necessity be in the High Court, since not enough competent persons would be available for the county court. This fact would accentuate the depletion of the Senior Bar and would imperil its ability to provide adequate representation for those accused of scheduled and other offences. Good cross-examination is a crucial factor in relation to admissibility of confessions and to the evidence of informers.

12. With the great increase in civil business, the manpower situation is even worse than when Diplock, Gardiner and Baker discussed the problem.

13. Trials would take longer and this would exacerbate the problem.

14. To remove some offences from the schedule would not help, unless they were made summary offences, because the same judges, counsel and courts would be required. And the kind of offence which might be descheduled is at present the subject of a short trial or a plea of guilty.

15. The suggestion that plural courts would be safer for judges is unwarranted and, with regard to cases which may involve special risk, it would be pointless to endanger more than one judge.

16. To confine plural courts to a limited category would not make sense, since the political demand would centre on the complex or

important case, which would be just the least suitable for this mode of trial.

POLITICAL GROUNDS

17. Plural courts would not increase public confidence (assuming for the sake of argument that confidence is lacking in persons whose confidence could by any means be either won or restored). Their adoption would promote argument as to whether cases had been properly tried up to the present and would lead to speculation as to the motives inspiring the composition of each judicial "team" and about the real or supposed differences of opinion among the judges constituting each court.

18. It would be a political mistake to use plural courts as a means of "reassuring the minority" while disregarding the effect on the majority and also a mistake to think that, because Mr. Paisley in Committee voted for three judges in 1973, the majority would be politically content with that now, having regard to the clamant demands of Mr. Mallon and the Government of the Republic for three judges.

19. To acknowledge a deficiency in the one-judge system, and thereby to admit that H.M. Government was wrong in 1973 and 1975 (and indeed in 1978 when renewing the Northern Ireland (Emergency Provisions) Act), would be a pointless concession of which full advantage would be taken.

20. "Public confidence" (an elusive concept) could actually be reduced by the judicial and political shortcomings of the plural method which I have listed.

21. It would be confusing the shadow with the substance to concede three-judge courts in the hope of winning a supposedly valuable benefit from the Government of the Republic. They will confer no benefit (since it is scarcely in their power to do so) that would not be far outweighed by the detriments listed above.

CONCLUSION

22. Single-judge trial has served us reasonably well for 13 years. It could be regarded as folly, both judicial and political, to change it in the face of the decision in 1973 and the advice consistently tendered to H.M. Government.

23. The administrative arguments, even if not the most important, are by themselves well-nigh conclusive against a change.

24. No judge has asked to be relieved of the "burden" of sitting alone. There is, indeed, acute awareness of the different burdens which sitting in a plural court would involve.

25. The justice of the present system, having regard to the usual level of acrimony of political argument here, has scarcely been called in question, but a change would not only put its justice in issue but lead to a whole new set of complaints and problems.

LOWRY

ROYAL COURTS OF JUSTICE
BELFAST
BT1 3JF

SECRET

11th September, 1986

Dear Secretary of State,

I would first repeat my thanks for the frank and courteous way in which you told me on Tuesday evening of your intention to propose to Cabinet colleagues the adoption of 3-judge Diplock courts either generally or in selected cases.

I took the opportunity of reminding you of the view of the Lord Chancellor and the Law Officers, which had in each case been confirmed to me last week, and of my own unqualified opposition to the change. As promised, I sent you yesterday a copy of the file which on 4th August I submitted to the Lord Chancellor. There are, however, some important points which I wish to emphasise.

None of the judges wishes to have his burden "lightened" by sharing it at first instance. We all consider that the intellectual, emotional and political strain in any worthwhile case would be increased by 3-judge courts. If we are thought to have done adequately so far, the best way to acknowledge this and to refute the arguments of our detractors would be to maintain the system which has worked for 13 years. No matter what language is used to introduce a change, this will be generally seen (and felt by the judges) as a humiliation and a recognition that something is amiss. The standing and morale of the Bench will suffer. I believe I could endure this more easily than most, and at least I would know that I had done my best to prevent it. But it would be worse for the others: they would feel thoroughly let down by the Government and perhaps to some extent by me. Human considerations apart, this will react on their efficiency and team spirit, which are exceptionally good. One reason for feeling ill used would be that the change would have been made at the behest of those who have persistently and shamefully questioned our integrity. They, for their part, would regard the change as a political triumph.

3-judge courts have been regularly in the papers for a year, with different stories every week. Yesterday (ironically enough) the "Irish Times" was pessimistic because "officials" said there were not enough judges for 3-judge courts. Never a week passes without judges asking me anxiously for news. Two asked me yesterday if I thought the danger was over. I could not disclose our talk (nor will I), but merely said that 3 judges were in my opinion still very much a live issue. They were much concerned, as always. The surprising depth of feeling betokens an insight into the consequences which should not be disregarded by the Government.

/The

The ostensible reason for change is to enhance community confidence, but only self-appointed theorists and certain politicians claim this; the truth is that those who distrust the courts will still do so. The main push is from the South; for the present they have almost shelved every demand in favour of this one, so vital do Fine Gael consider it to make a political breakthrough. The P.U.S. was frank about this at dinner on 28th July, speaking of a "symbolic political success for the Irish Government". If we assume this to be a desirable object, I submit that the cost at which it would be attained is out of all proportion.

The grounds of opposition in my note are judicial, administrative and political. Although conceding that points can be made in favour of 3 judges by reference to isolated examples, I feel that it is not realistic for N.I.O. to oppose the views of the Lord Chancellor, the Law Officers and Diplock, Gardiner and Baker on judicial or administrativ grounds. The shortage of numbers is prohibitive and I wish it to be clear that to allow resident magistrates and deputy judges to sit is out of the question. It would also be very foolish to have 3-judge courts for only the complex and multi-defendant cases: these would actually be the most unsuitable.

This leaves the political considerations, as to which, admittedly, N.I.O. have the leading interest. But there is great danger in thinking on narrow lines and leaving out of account the political disadvantages likely to flow from the interaction of the public and 3-judge courts. To avoid tiresome repetition, I refer to my letter of 4th August to the P.U.S. (Appendix 6).

On this (largely mythical) question of confidence, the courts have actually suffered more from the supergrass trials than anything else. In 15 years I have received about 3 letters of complaint about judging generally and about 30 about Diplock (nearly all recent and nearly all about supergrasses). Despite some first instance acquittals and successful appeals, we are closely identified with a "system" which (however lawful, necessary and reasonably well conducted) is greatly disliked and despised by ordinary people and particularly repulsive, I surmise, to Irish people, because it depends on the use (and on the rewarding) of the hated class of informers. The potential value of this kind of evidence is, of course, recognised and there are quite strong arguments against making changes in this field. In any event, we shall continue to judge according to law.

You have kindly encouraged me to consult with the Lord Chancellor and the Law Officers, and I am sending them copies of this letter.

/May I

CHIEF JUSTICE
NORTHERN IRELAND

May I, however, conclude by saying that I am writing to you in the confidence that you will give my points most serious consideration and in the anxious hope that you will be persuaded.

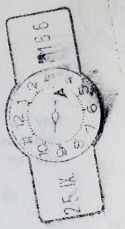
With best wishes,

Yours sincerely,

Robert Lowry.

Rt. Hon. Tom King, M.P.,
Secretary of State for Northern Ireland,
Stormont Castle,
Belfast,
BT4 3ST.

IRELAND Situation PT21



SECRET

19

SECRET

Northern Ireland Office
Stormont Castle
Belfast BT4 3ST

Rt Hon George Younger MP
Secretary of State for Defence
Ministry of Defence
Whitehall
LONDON
SW1A 2HB

23 September 1986

Dear George,

FORCE LEVELS IN NORTHERN IRELAND

Thank you for your letter of 16 September. For the reasons given below my response must still remain an interim one, although I shall be coming back to you in definitive terms as soon as I can next month.

Your letter seems to turn on two assumptions:

a. that today's threat and level of violence have returned to the levels of 1985, before the upsurge at the end of that year; and

b. that soldiers can be replaced by policemen, and that we are committed to doing so.

I am afraid that I have to take issue with you on both grounds. We do not believe here that the level of threat and violence has subsided as you suggest. Those responsible for the earlier threat assessment believe that the current threat is substantially higher than this time a year ago and certainly comparable to the high levels of activity in December and January. Some PIRA tactics have changed, almost certainly, as intelligence has demonstrated, in response to the level of protection now given to RUC stations. The current emphasis is much more on proxy bombs than direct mortar

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attacks - a tactic which is more difficult to preempt. We can expect PIRA to keep changing its tactics in response to action by the security forces. Additionally, we face an increasing problem in Belfast - which has been relatively quiet for the past year, because of Security Force successes; and the recent upsurge in sectarian violence does not make the security force task any easier. As to the level of violence, we have already had nearly as many deaths as in the whole of 1985: in the comparable period of both years, injuries are up by 75%; shooting incidents by 50%; and attacks on RUC stations by more than 50%. It is very difficult to equate this situation on the ground with a view that we are now no worse off than we were last year.

As you recognise, I do not yet have the report of the study into the relationship between police and army tasks. I hope to have it by the end of this month, but I am advised thatit is already clear that there is a fundamental divergence of view between the police and army as to their appropriate tasks, and that any agreed action could have only a peripheral effect on army manpower. This will present us both with a real problem, but I will come back to you as soon as I have discussed the report with the Chief Constable and GOC.

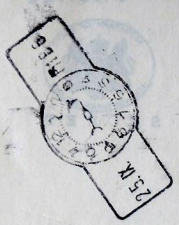
Finally, I am disappointed if there has been a misunderstanding about the Prison Guard Force. In my letter of 18 July I was not endorsing the GOC's position but rather making it clear that between the 140 or so men now committed, and the platoon sought by the GOC, there could be some scope for compromise.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Douglas Hurd and Sir Robert Armstrong.

Yours

SP

IRELAND Situation PT21



10 DOWNING STREET

Prime Minister

Three Man Courts

In fairness, you ought also to look at Tom King's paper – though it is hard to see how he reaches the conclusion that the arguments in favour outweigh those against.

CDP
23/9.

SECRET

From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

18

Charles Powell Esq
Private Secretary
10 Downing Street
LONDON
SW1

23 September 1986

Dear Charles,

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

In his minute of 18 September on this subject, Mr King undertook that a paper setting out the arguments which lay behind his recommendation would be circulated early this week.

I now attach a paper which summarises the key arguments both for and against the proposition that there should be three-judge courts for the trial of contested scheduled cases in Northern Ireland. It was after a very careful consideration of all these arguments that Mr King concluded that on balance it was in the interests of the administration of justice in Northern Ireland to recommend the introduction of three-judge courts.

I am sending copies of this letter to the Private Secretaries to the Lord President; the Lord Chancellor; the Foreign and Commonwealth Secretary; the Home Secretary; the Attorney General and Sir Robert Armstrong.

Yours Sincerely,
Neil Ward

N D WARD

SECRET

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

Part I of this paper presents in summary form the arguments for introducing three-judge courts for the trial of scheduled offences in Northern Ireland; and Part II marshalls the objections to this proposal.

Part I - The Case for introducing three-judge courts

Where an accused person is being tried for a serious offence but without a jury, and especially if the case is particularly complex or turns on the uncorroborated evidence of an accomplice, the credibility of the system of justice and public confidence in it would be enhanced if the case were heard by three judges rather than one:

(a) in normal criminal trials the defendant's guilt or innocence is determined by twelve independent people. Thus the prosecution has to convince twelve people (or a significant majority of them) that the defendant is guilty beyond reasonable doubt. In every Western society, even where there is no jury, the tribunal of fact in criminal cases consists of more than one person. Even if it is accepted that it would be inappropriate for members of the public to play a part in the trial on indictment of scheduled offences, it would be appropriate to recreate at least some of the sense that decisions about guilt or innocence in a criminal trial should be made by group, rather than an individual;

(b) if a trial was held before three people it would help to counteract any tendencies which individual members of the court might have to severity or leniency; any subconscious bias which might be present; and any individual inclination there might be to accept particular types of evidence, interpret the law in a particular way or accept the arguments of a particular barrister;

(c) In discussing its judgement, a three-judge court would be less likely to err in its analysis of the evidence or its interpretation of the law. The process of three minds working to produce a judgement on a particular case would be more likely to produce a comprehensive, sound verdict.

2. Any procedural difficulties could be overcome:

(a) Sir George Baker (paragraphs 113-129 of his report) said that he had some doubt about Lord Diplock's conclusion that a plurality of judges would lead to procedural difficulties;

(b) he referred to the experience of three-judge courts in India and the Republic of Ireland and concluded that they had not faced significant procedural difficulties;

(c) the drafting of a single written judgement when convicting for a scheduled offence should not be a matter of great difficulty for a three-judge court. It ought to be possible to draft such a judgement in a way which fully reflects all the nuances of each judge's position. (If it were quite impossible for the court to reach agreement on the wording of a judgement it could presumably order a retrial.);

(d) the alternative of providing separate written judgements when convicting for a scheduled offence (but not when acquitting, to prevent "tainted" acquittals) would avoid any difficulty over agreeing a joint judgement and facilitate the Court of Appeal. There would be no greater risk than exists at present of political motives being attributed to individual judges. In fact it would be easy to demonstrate the falsity of any such inferences by referring to the judgement of the judge in question which would set out in detail his grounds for convicting.

3. The setting up of three-judge courts would not pose insuperable practical problems:

(a) at present there are usually two major 'Diplock' trials underway at the Crumlin Road Courthouse at any one time, and one taking guilty pleas or simpler cases. There is provision for a fourth court. Thus a move to three-judge courts would probably require the appointment of a maximum of six additional judges. There are currently 22 judges (10 Supreme Court and 13 County Court - minus one who is a full time Social Security Commissioner) so this would only represent a 25% increase in the size of the judiciary. If guilty pleas continued to be heard before a single judge it might even be possible to manage with a smaller increase, particularly if three-judge courts were introduced for only a limited category of scheduled cases;

(b) the setting up of three-judge courts would undoubtedly put strains on the Court Service's ability to provide appropriate accommodation and services for the extra judges. It may be, however, that the proposed amendment to Section 6(1) of the Northern Ireland (Emergency Provisions) Act 1978 (the EPA) to permit trials for scheduled offences to be held other than at Crumlin Road would reduce some of the pressure, e.g. by allowing smaller or simpler trials to proceed at the new Craigavon courthouse or elsewhere in the province;

(c) any difficulty which might be experienced in finding Supreme Court judges to hear appeals in cases which many judges were disqualified from hearing (because they had heard bail applications or the original trial) would be countered by the appointment of the extra judges and perhaps by the removal of the special appeal rights conferred by the EPA in scheduled cases (see below);

(d) more judges could be appointed without unduly weakening the Senior Bar as 12 new QCs were appointed last year (a 50% increase) and the junior bar now contains far more barristers with ten years seniority than when Sir George Baker reported.

4. Everyone accepts that the removal of the right to trial by jury for scheduled offences requires a compensating safeguard. Gardiner concluded that the appeal provisions in the EPA constituted a sufficient extra safeguard. It would be better all round, however, for the safeguard to bite at the trial of first instance, rather than at the second stage of the judicial process - often several months after the original conviction and up to five years (in extreme cases) after the defendant was arrested. A corollary of this argument is that the special appeal provisions in the EPA could perhaps be repealed, leaving persons convicted of scheduled offences with exactly the same rights of appeal as everyone else (as in the Special Criminal Court).

5. The creation of three-judge courts for the trial of scheduled offences would have major presentational advantages:

(a) it would be less easy for critics to claim that the Diplock system involved no more than the removal of the jury;

(b) the safeguard would be visible right from the beginning of the judicial process and would bite at that stage. The current enhanced rights of appeal are difficult to explain convincingly; and if they operate to acquit a person it is usually long after the publicity surrounding the original trial; and there is usually an added ground of complaint to the effect that the defendant has been in prison for several years before finally being acquitted.

6. Three-judge courts would increase public confidence in the judicial system:

(a) there has been a significant erosion of the minority community's confidence in the judicial system over the past 3 or 4 years and despite some practical problems which

might well mean that three-judge courts were not in a technical sense any "better" at dispensing justice than the current Diplock courts, the minority could be expected to welcome their introduction and be more inclined to support the judicial system and the forces of law and order. The Government would at least have been seen to address an issue of major concern;

(b) despite recently-voiced political objections to anything which might emerge from the Anglo-Irish process, Unionists might privately welcome any such development, which has long been part of DUP policy;

(c) moderate voices such as SACHR and the Alliance party have also long supported the introduction of three-judge courts on the grounds that this would increase public confidence in the judicial system.

Part II - Objections to the three-judge court proposal

7. There is no objective case, in terms of the actual performance of the judicial system, for changing the present "Diplock" structure:

(a) there is no evidence or substantial belief that it has resulted in perverse convictions or acquittals or other unfairness. Indeed, guilty pleas and acquittal rates are comparable to those in non-Diplock courts. Despite the unfettered rights of appeal there were proportionately fewer appeals lodged in 1985 against conviction for scheduled offences than in ordinary criminal cases (and no evidence has been adduced that failures to appeal are due to lack of confidence in the appeals machinery);

(b) there is no evidence of any substantial perception that the judiciary is biassed in favour of Loyalists. Indeed there is often criticism of the judiciary from the Unionist side for not convicting alleged Republican terrorists;

(c) the special appeals regime constitutes a substantial safeguard which independent legal figures, eg the Gardiner Committee, have found to be sufficient to compensate for the absence of a jury.

8. The three judge court proposal involves a number of substantial practical difficulties. On an objective analysis it is not easy to show why it should be considered "better" than, or even as good as, the current Diplock system in terms of its ability to dispense justice even-handedly:

(a) in any trial of first instance, difficult legal and procedural issues may arise: while a three-judge court might sometimes dispose of these without difficulty, the need to reach collective decisions would be liable to disrupt the process of examination and cross-examination, and prolong the trial proceedings;

(b) particular problems would arise in determining whether a three-judge court should be entitled to reach a majority verdict, or whether a guilty verdict should require unanimous support. The related difficulty is whether the views of the individual judges should be revealed or not. The Irish Special Criminal Court (in which three judges try terrorist-type cases) can reach majority verdicts but is expressly forbidden to reveal differences of view between the judges. In the divided society of Northern Ireland such concealment would lead to unhelpful speculation: if guilty verdicts had to be unanimous there would be speculation that a judge of a particular persuasion had secured acquittals by holding out against his colleagues' views, and if verdicts could be reached by a majority Catholics might come to believe that any judge from the minority would always be "outvoted"; but if individual judgements were revealed it could give rise to even more unhelpful speculation that particular judges

were politically-motivated. All this would tend to bring judicial decisions within the ambit of political discussion and would not serve the aim of increasing public confidence in the judicial system;

(c) additionally, the suppression of the views of individual members of the court of first instance would not be in the interests of justice at any subsequent appeal hearing, particularly if the gravamen of the appeal was a matter on which the judges in the court of first instance had in fact disagreed.

9. While the Special Criminal Court might function adequately in the Republic it would not necessarily provide an acceptable model for a less homogenous society, particularly the deeply-divided society of Northern Ireland. Northern Ireland has substantial political lobbies concerned about the rights of suspected terrorists; and a vociferous civil liberties lobby. Any scheme for bringing suspected terrorists to trial in NI would have to withstand intense scrutiny. Moreover the Special Criminal Court deals with such a low percentage of criminal trials in the Republic (and such a very small absolute number of cases each year) that it would be rash to generalise from its experience.

10. Substantial practical difficulties would arise in finding sufficient judges (or other suitably qualified persons) to constitute three-judge courts for the trial of scheduled offences in Northern Ireland. Increasing the workload of existing judges or reducing the size of the Senior Bar by appointing more judges would probably exacerbate the problem of 'delays' between first remand and trial.

11. It seems questionable if the introduction of a 3-judge court would achieve its stated aim of encouraging minority confidence in the judicial system in NI. It would still be the case that judges from the minority would be outnumbered in virtually every 3-judge court which was constituted. The

minority perception might well be that the judge from their community had been 'outvoted'.

12. In the present political climate in Northern Ireland, the introduction of a system of three-judge courts would run up against significant opposition from the majority community, particularly if it offered no objective advantages over the present system and failed to increase minority confidence in the judicial system. If they felt that the new system would be likely to lead to more acquittals it might well exacerbate their lack of confidence in the Government's security policy. Regardless of earlier statements in favour of three-judge courts, Unionist politicians would undoubtedly express vigorous opposition to and refuse to co-operate with any such proposal which was seen to have emerged from the Conference.

NORTHERN IRELAND OFFICE

23 September 1986

IRELAND Situation Pt 21

10 DOWNING STREET

Prime Minister

Northern Ireland Courts

You asked to see Lord Lowry's note. You will find it attached to the Lord Chancellor's minute which has just come in (a pretty conclusive vigorous piece!).

You ought also to read Tom King's note.

If you ok, I have arranged a meeting CDP 22/9. for 2 October.

FROM: [redacted] SECRET

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
LONDON SW1A 0PW

PRIME MINISTER

Administration of Justice in Northern Ireland

1. I am frankly appalled at the suggestion of three judge Courts of first instance contained in the Northern Irish Secretary's minute to the Prime Minister of 18 September. From the point of view of the administration of justice in the Province I can imagine no more disastrous step and the fact that it is blatantly, and to my mind cynically, proposed as a political sop to the Dail only makes it more certain that its reception and the political consequences would be disastrous. I feel it necessary to summarise some of the main objections to it which I have not been given the opportunity to discuss with the Northern Irish Secretary for the reasons contained in para 4 of the minute. My objections are as follows.

2. Despite what is suggested in the Secretary of State's minute there is no juristic case for three judge Courts at all. The suggestion has been considered carefully over a period of years by such different characters as Lord Gardiner, Lord Diplock and Sir George Baker. It has been turned down on its merits every time. It is bitterly opposed by almost all, and, I believe, every member of the Northern Irish Judiciary, Catholic and Protestant, who, in addition to objections on its merits, would regard it as a slight upon their own integrity since in their opinion (and mine) it could only be viewed as an admission that the existing arrangements are unsatisfactory.

3. The High Court and Court of Appeal in Northern Ireland consist of 3 Lords Justice of Appeal, the Lord Chief Justice and 5 puisne judges of the High Court (nine in all). Of the nine in this category only two, Higgins J and O'Donnell LJ, are Catholic. The existing Diplock Courts and supergrass trials have put a heavy strain on them, not diminished by their hitherto resolute,

but now declining, opposition to the abolition of civil juries. The County Court Bench (13 in all including the Recorder of Belfast) is, owing to recruitment difficulties, predominantly Protestant (12 out of the 13 are non-Catholic). (Catholics are particularly the targets of the IRA). There are heavy arrears of civil and ordinary criminal work in all courts. The introduction of three judge Courts would throw the entire system into disarray. Cases would take longer. Limited judge power would be wasted. In the light of the judge power available the Appeal system would be virtually impossible to operate. So far from being an argument for three judge Courts the Black trial (a successful appeal against a decision of Kelly J in a supergrass case) referred to by the Secretary of State highlights the success of the present arrangements. It would be difficult to run an appeal system with such a small judiciary since a five judge Court would almost certainly be necessary to hear an appeal from a three judge Court, and in any event with such a close knit judiciary the whole appeal system would be made to look ridiculous. Incidentally the Black case is a good example. Before one High Court judge it took, I believe, in the neighbourhood of one hundred days (that is nearly half a judge's time for a year). Before three (multiplied of course because that was only one case out of many) the logistics are horrendous.

4. Politically and from the point of view of sectarianism the three judge Courts would certainly be disastrous. It would hardly be possible to run it except on the basis of two Protestants and one Catholic (if one could be found) and on the operation of the law of chance it would not be long before the Catholic judge would find himself in a minority of one to two. The fat would then be properly in the fire, and the situation would only be slightly better if a Protestant defendant found himself convicted by a divided Court with the Catholic judge forming part of the majority.

5. I believe that the Northern Ireland Secretary has underestimated the hostility with which this change will be treated by Unionists already deeply antagonised by the agreement, and the serious effect that this added source of tension between the two communities would have on sectarianism generally.

6. It is the opinion of the Lord Chief Justice (which I share) that far from increasing the security of judges in cases involving special risk the three judge system would only put three judges at personal risk instead of one.

7. I must add that I consider that this proposal is based on a misunderstanding of the nature of the dynamic in Irish nationalism. In 1921 we signed a Treaty which we have honoured in spirit and in letter. That Treaty envisaged a Common Sovereign (George V), common membership of what has since become the Commonwealth, Treaty Ports and a permanent Border, (subject to minor adjustment which proved impossible). Irish Nationalists have never recognised the Treaty which they regard as having been made under duress. Their constitution claims all 32 counties. They have successively become a republic, left the Commonwealth, recovered the Treaty Ports, established neutrality in the War against Hitler and never ceased to interfere in Northern Irish affairs. Each concession is regarded as a jumping off place for further demands with little enough given in return. No one wishes more than I to live on good neighbourly terms with the Republic. No one wishes more than I better relations between my fellow citizens in the North, and, incidentally, no one could be more opposed than I to the foolish uncouth and boorish tactics of the present day Unionist Party. But to go down this sort of road simply to gain a temporary advantage in the Dail is neither sensible nor politically or morally justified.

8. I am copying this minute to the Lord President, the Foreign and Commonwealth Secretary, the Home Secretary and Sir Robert Armstrong.

H. of S. M.

22 September 1986

E.R.

Thank you
CDP

MR. POWELL
MR. NORGROVE
MR. BEARPARK

THURSDAY 2 OCTOBER

RJA

I have re-arranged the Northern Ireland meeting for 1600 hours on 2 October. The Lord President, the Lord Chancellor, the Foreign Secretary, the Secretary of State for Northern Ireland and the Attorney General will attend. The Home Secretary will be in Sheffield and I have asked his office if he can put his views in writing. Sir Robert Armstrong is meant to be at the Opera.....

E(LF) is back to its original time of 12 noon.

CR.

C.R.
22 September 1986

ccfc

EDP
22/9.

FCS/86/222

SECRETARY OF STATE FOR DEFENCE

Additional Royal Engineer Support in Northern Ireland

1. The Northern Ireland Secretary sent me a copy of his letter to you of 15 September about his need for further Royal Engineer assistance for construction work at RUC stations and at HM Prison, Maze.

2. As Tom says in his letter, the Provisional IRA are making determined efforts to bring this vital security work to a halt. It is clear that they must not be allowed to succeed and, in the absence of a sufficient number of civilian contractors, we have no alternative but to turn to the Sappers for help. We must be seen to be responding with all possible vigour to this latest PIRA campaign if we are to persuade the Irish to make greater efforts in cross-border security cooperation.

3. I am copying this letter to the Prime Minister, Tom King, Douglas Hurd and to Sir Robert Armstrong.

CRBudd (Private Secretary)

JP

(GEOFFREY HOWE)
(Approved by the
Foreign Secretary and signed
in his absence)

Foreign and Commonwealth Office
22 September 1986

IRELAND Situation PT21

PRIME MINISTER

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

The Northern Ireland Secretary's note attached (Flag A) concludes that we should declare our intention to introduce 3-judge courts (all judges drawn from Northern Ireland) for certain limited cases e.g. terrorist offences. He makes this recommendation on the merits of the case: particularly the growing criticism of single judge courts in 'super-grass' trials or those with a large number of defendants.

Mr. King acknowledges that there is also an Anglo-Irish dimension. The record of Sir Robert Armstrong's recent meeting with Mr. Nally (Flag B) suggests that the Irish will not be able to get ratification of the Convention on the Suppression of Terrorism through the Dail without some move by us on three-man courts. The Taoiseach said as much to you in June.

The Lord Chief Justice in Northern Ireland remains firmly opposed, and claims the support of other judges.

You will need an early meeting to consider this, with the Lord President, Lord Chancellor, Northern Ireland Secretary, Home Secretary, Foreign Secretary, Attorney-General and RTA.

Agree to a meeting?

I must see the LCJ about this

CDP

(C.D. POWELL)
19 September 1986

SECRET

SECRET

Ref. A086/2616

MR POWELL

Administration of Justice in Northern Ireland

The Secretary of State for Northern Ireland has sent me a copy of his minute of 18 September.

2. In the brief conversation which you and I had with him yesterday on the subject, the Secretary of State made it clear that he could not take sole responsibility for the consequences of deciding not to make any move on three-judge courts at this time, particularly in relation to the Irish Government's plans for introducing legislation in the Dail to ratify the European Convention on the Suppression of Terrorism (ECST). He would therefore like an early meeting to discuss the subject. That meeting will need to include not only the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland but also the Lord President, the Home Secretary and the Attorney General (or the Solicitor General).

3. On the case for introducing three-judge courts, I would only add two points to what the Secretary of State for Northern Ireland has said:

(a) The Black case (to which the Secretary of State refers in his minute) can be seen as strengthening the case for having a three-judge court in supergrass trials, where there is no jury. Mr Justice Kelly not only accepted the evidence of the supergrass Black but went out of his way to praise his credibility. The Court of Appeal, presided over by Lord Chief Justice Lowry, took a very different view of Black's evidence and was critical of Mr Justice Kelly's acceptance of it. It is at least possible to suppose that,

NOIAAN

if two other judges had been sitting with Mr Justice Kelly, he would not have been so led astray by Black's plausibility.

(b) The logic of the argument would be to extend three-judge courts to all non-jury trials ie to all trials in the Diplock courts. But it is not necessary to go that far: it would be possible to introduce three-judge courts only for supergrass trials, or only for the trial of a certain limited range of offences - for instance, murder and attempted murder. So there is some scope for putting a toe in the water rather than the whole foot.

4. There is no doubt about the signals which are coming from the Irish Government about the Taoiseach's need for some move on this, if he is able to get through the Dail without derogations or reservations the proposed legislation for the ratification of the ECST. The argument is that an announcement by the British Government to the effect that they were prepared to introduce three-judge courts would enable the Taoiseach to say that the extraditions which the ratification legislation would make possible would be to a system of justice which would be significantly improved and in which nationalists could have confidence.

5. Nor is there any doubt that the Taoiseach's political situation now is more difficult than it was a year ago.

6. As the Secretary of State implies, though there was no explicitly conditional relationship in the Hillsborough Communiqué between improvements in the adminsitration of justice in Northern Ireland and the ratification of the ECST, the Irish Government in general and the Taoiseach in particular have always seen them as related, and that is the significance of the words "against that background" in the Hillsborough Communiqué.

NOIAAN

7. I do not think, therefore, that it would be wholly fair to think that what the Taoiseach is trying to do is to "up the ante" for introducing the ratification legislation. I have no doubt that he himself wishes to go ahead with it. But I should not be surprised if some of his colleagues are not particularly keen to go ahead (though they are committed by the Taoiseach), and would find it not unwelcome to be able to say that they would have liked to go ahead but were being prevented from doing so by the British Government's failure to live up to their undertaking to do something about improving nationalist confidence in the administration of justice in Northern Ireland.

RA

ROBERT ARMSTRONG

19 September 1986

NOIAAN

IRELAND: Situation: PE 21

SECRET

PRIME MINISTER

ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND

1. I have been considering, 13 years after the introduction of the non-jury "Diplock" courts for terrorist offences in Northern Ireland, whether it is time to introduce changes.

2. These courts, with a single judge trying issues of both fact and law, were introduced as an emergency measure in response to the risks of perverse verdicts and intimidation of jurors. They are buttressed by an automatic right of appeal against a conviction by the single judge. Measured by objective standards, such as the acquittal rate compared with that for jury trials, the courts have provided impartial justice; and the reputation of the Northern Ireland judiciary deservedly stands high.

3. Nevertheless, with no possibility of a return to jury trials in prospect, the system is vulnerable to criticism both domestically and internationally. And criticism that a single judge is an inadequate substitute for a jury is strengthened by the so-called supergrass trials, those in which a large number of defendants together face charges on the evidence, often uncorroborated, of a former accomplice. A recent Court of Appeal decision (the Black case) which led to the acquittal of a number of defendants who had already served substantial sentences on the evidence of a supergrass has strengthened the case for change and made it more difficult to argue that the automatic right of appeal is a sufficient safeguard. While each of the separate elements can be readily justifed - one

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single judge, no jury, an uncorroborated prosecution witness (usually an accomplice) and a large number of defendants - the combination of all together is open to real criticism. I have been considering what might be the best approach to improving the acceptability of the system.

4. The initial focus of criticism of the system has been on the use of informers and the fact that as many as 30 defendants have appeared in the dock at the same time. However I am extremely loath to put any further hurdles in the way of the prosecuting authorities, given the tremendous difficulties that they face in getting witnesses into court against the background of intimidation that exists. The Irish approach had earlier been to propose mixed courts with a judge from one jurisdiction sitting with two judges from the other jurisdiction on terrorist cases. We have always made clear our objection to this approach and I believe that the Irish now accept this is not a realistic possibility. I have therefore been considering whether there might be grounds for meeting some of the concerns by moving to a system of 3-judge courts for a limited range of cases. They could be introduced for all contested scheduled (ie terrorist) offences, or for a more limited range of such cases, possibly those involving uncorroborated evidence where a substantial number of defendants are being tried together. My original intention was to propose that there should now be a more detailed study of this option with colleagues over the coming months. However we have now received an urgent message from the Irish Government about the introduction into the Dail of the legislation to enact the European Convention on the Suppression of Terrorism. I understand that this will now be brought forward on 10 October and, given their precarious position

SECRET

in the Dail, the Irish Government believe that it will be essential if that legislation is to proceed, particularly in its present form with no reservation on the political aspect, that there should have been some movement on arrangements for the administration of justice in the North. They believe that the Hillsborough communique confirms the understanding that there would be such movement and that it was 'against that background' that it was the intention of the Irish Government to accede to the European Convention. If we are to give an answer to the Irish within their timescale, we must accelerate our consideration of these issues, and it is therefore necessary for me to put my proposals before you and colleagues immediately, without first discussing these further with the Lord Chancellor and the Law Officers, as I would have preferred.

5. My own judgment is that in the interests of achieving wider support for a system of justice in the North we should say that we are prepared in principle to introduce 3-judge courts in the first instance for certain scheduled offences. I believe that there are good arguments for this change in its own right. It is also undoubtedly true that it will significantly strengthen our hand both amongst the nationalist community in Northern Ireland, in the Republic, and in the United States that we do recognise the concerns over this issue; nor is this a measure which in recognising nationalist concerns is in any sense hostile to unionists since indeed there has been strong unionist and Alliance support for 3-judge courts in the past.

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6. Having formed my view and because of the time factor that has now arisen I thought it right to inform, in strict confidence, the Lord Chief Justice in Northern Ireland of my proposals. I made clear to him my understanding that he might wish to discuss the matter with the Lord Chancellor in view of his very strong reservations about such a proposal. The fact that our meeting was entirely courteous and indeed amicable does not leave me under any illusion of the strength of his reservations. He believes these are shared by the vast majority of the judges in Northern Ireland. He has since written to me confirming his opposition to 3-judge courts, even in a limited range of offences, while nonetheless recognising the problems posed by supergrass trials and the particular hatred in Ireland for informers who may be rewarded for their evidence.

7. The Lord Chief Justice drew attention to the implication that my proposals might be interpreted as a condemnation of what had gone before. I believe this objection can be met: our case would be that, whatever might have been fitting as an "emergency" measure, a new approach had become necessary now that it was clear that there was no prospect of restoring jury trial for terrorist offences in the foreseeable future. A change which acknowledged this reality need cast no reflection on the past performance of the courts, and there is no doubt that it would be seen as a response to genuine concerns about the way the system is working. Those concerns, as you know, made more difficult our task of improving extradition arrangements with the United States, and they are currently looming large in our efforts to extradite terrorists from Holland.

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8. The other main objection we have to meet is that plural courts are ill-suited to our adversarial system of trial at first instance. But, as the Baker report acknowledged, they are not unprecedented and the Irish can hold the precedent of their own special court before us. Clearly there are difficult legal and technical questions to answer before we could legislate for such a scheme; but I do not believe that they raise insuperable difficulties. In the context of the Anglo-Irish Conference, officials have already identified such questions as the number and status of the additional judges who would be needed; whether the judgments of 3 judges should be unanimous; the form which judgments should take; and whether, with a 3-judge court, the automatic right of appeal should be retained. My proposal is to announce that we are prepared in principle to introduce 3-judge courts for certain scheduled offences and that we shall be carrying out a detailed study (in which the co-operation of the judiciary would be essential) as to how this is best accomplished. I should want to consult with the Lord Chancellor and other colleagues about how such a study should be conducted. I believe that the proposals that I have made do justify consideration on their merits; I understand that there is no country in the western world or even in eastern Europe where serious offences are tried before a single judge if a jury is not present. The additional features of the supergrass trial added on to the original Diplock structure have undoubtedly damaged credibility and have been criticised from all sections of the community. These are issues that I believe we need to address, quite aside from the obvious implications that this issue has now assumed in our Anglo-Irish considerations.

SECRET

9. However I would not propose any change because of the Irish dimension. Indeed there is no certainty that the Irish legislation will go through whatever we do. I base my proposal on the merits of the case, but of course if we are prepared to make it, an early declaration of our intention will be invaluable in the Irish context. My proposal therefore is that we should announce that we are prepared in principle to introduce 3-judge courts in the first instance for certain scheduled offences: we should make this announcement some time in advance of the introduction of the legislation on the European Convention into the Dail on 10 October.

10. I am circulating early next week a paper setting out the relevant arguments in more detail and I hope it would then be possible to have a meeting to discuss my proposal.

11. I am copying this minute to the Lord President; the Lord Chancellor; the Foreign and Commonwealth Secretary; the Home Secretary; the Attorney General and Sir Robert Armstrong.

TK

TK

18 September 1986

SECRET

SP/JLD

CONFIDENTIAL

PM/86/058

THE PRIME MINISTER

The International Fund for Ireland

1. The Northern Ireland Secretary wrote to you on 16 September nominating Mr Charles Brett, CBE as Chairman of the Board. I strongly support the nomination.

2. I am copying this minute to Tom King and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

18 September 1986

CONFIDENTIAL

IRELAND Situation PT21

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

18 September 1986

THE INTERNATIONAL FUND FOR IRELAND

The Prime Minister has considered the Northern Ireland Secretary's minute of 16 September, proposing the nomination of Mr. C.F.B. Brett as Chairman of the International Fund for Ireland. She would be content to see Mr. Brett appointed.

I am copying this letter to the Private Secretary to the Foreign and Commonwealth Secretary and to Sir Robert Armstrong.

(Charles Powell)

Jim Daniell, Esq.,
Northern Ireland Office.

CONFIDENTIAL

10 DOWNING STREET

CF

Northern Ireland.

Please keep this on file, for the PM's next discussion with the Northern Ireland Secretary.

CDP.

16/9.

(N. Ireland.
LCJ & Nato 21.8.86 was attached but removed from file → CDP 22/9)

14A

LORD CHIEF JUSTICE NORTHERN IRELAND

SECRET

Non-jury trial of Scheduled Offences

INTRODUCTION

1. The mode of trial since 1973 has been by a single judge without a jury. Two-judge or three-judge courts ought to be resisted on three grounds, judicial, administrative and political, as set out below. I also refer to the following appendices:

1. Diplock Report 1972 paragraph 39;
2. Gardiner Report 1975 paragraphs 30-33;
3. Baker Report 1984 paragraphs 109-126;
4. Note dated 23rd May, 1973;
5. Note dated 15th November, 1983;
6. Copy letter L.C.J. to P.U.S., N.I.O., dated 4th August, 1986.

JUDICIAL GROUNDS

2. Our system is unsuitable for collegiate trial of fact, including rulings on admissibility and procedure. This drawback is greater if the presiding judge, as he should be, is merely first among equals.

3. Single judge trial is accepted in civil cases, where serious imputations are often made and very important issues must be resolved on a balance of probabilities, which increases the difficulty.

4. In a jury trial one judge already takes sole responsibility for two issues which may decide the outcome:

1. the existence of a case to answer; and
2. admissibility of evidence, including the statements of the accused.

He should continue to do so in a non-jury trial.

5. The different views which the members of a plural court could take on the matters in paragraph 4 would create irreconcileable difficulties in considering the evidence.

6. The need for the "safeguard" of a plural court is negatived by the paucity of examples of allegedly wrong or doubtful convictions and also by the unfettered right of appeal.

7. The argument of "safety in numbers" applicable to a lay jury, does not apply to a judge whose full-time duty is to reach conclusions upon evidence.

8. There is no true parallel between trial and appeal, where the matters for decision are legal propositions and the trial judge's performance.

9. Sole responsibility for a conviction is probably a greater protection for the accused than shared responsibility.

10. Trial by a plural court could result in superficial treatment of some issues or, alternatively, agonising and lengthy discussion, and could make it difficult to produce a judgment based on reasoning in which all or a majority concur. This could also lead to less detailed written judgments which would be less open to analysis on appeal to the detriment of appellants.

ADMINISTRATIVE GROUNDS

11. To provide enough plural courts would place an intolerable strain on judicial resources and eventually on the quality of the Bench. Nearly ~~all the appointments~~ would of necessity be in the High Court, since not enough competent persons would be available for the county court. This fact would accentuate the depletion of the Senior Bar and would imperil its ability to provide adequate representation for those accused of scheduled and other offences. Good cross-examination is a crucial factor in relation to admissibility of confessions and to the evidence of informers.

12. With the great increase in civil business, the manpower situation is even worse than when Diplock, Gardiner and Baker discussed the problem.

much longer 13. Trials would take longer and this would exacerbate the problem.

14. To remove some offences from the schedule would not help, unless they were made summary offences, because the same judges, counsel and courts would be required. And the kind of offence which might be descheduled is at present the subject of a short trial or a plea of guilty.

15. The suggestion that plural courts would be safer for judges is unwarranted and, with regard to cases which may involve special risk, it would be pointless to endanger more than one judge.

16. To confine plural courts to a limited category would not make sense, since the political demand would centre on the complex or

/important

important case, which would be just the least suitable for this mode of trial.

POLITICAL GROUNDS

17. Plural courts would not increase public confidence (assuming for the sake of argument that confidence is lacking in persons whose confidence could by any means be either won or restored). Their adoption would promote argument as to whether cases had been properly tried up to the present and would lead to speculation as to the motives inspiring the composition of each judicial "team" and about the real or supposed differences of opinion among the judges constituting each court.

18. It would be a political mistake to use plural courts as a means of "reassuring the minority" while disregarding the effect on the majority and also a mistake to think that, because Mr. Paisley in Committee voted for three judges in 1973, the majority would be politically content with that now, having regard to the clamant demands of Mr. Mallon and the Government of the Republic for three judges.

19. To acknowledge a deficiency in the one-judge system, and thereby to admit that H.M. Government was wrong in 1973 and 1975 (and indeed in 1978 when renewing the Northern Ireland (Emergency Provisions) Act), would be a pointless concession of which full advantage would be taken.

20. "Public confidence" (an elusive concept) could actually be reduced by the judicial and political shortcomings of the plural method which I have listed.

21. It would be confusing the shadow with the substance to concede three-judge courts in the hope of winning a supposedly valuable benefit from the Government of the Republic. They will confer no benefit (since it is scarcely in their power to do so) that would not be far outweighed by the detriments listed above.

CONCLUSION

22. Single-judge trial has served us reasonably well for 13 years. It could be regarded as folly, both judicial and political, to change it in the face of the decision in 1973 and the advice consistently tendered to H.M. Government.

23. The administrative arguments, even if not the most important, are by themselves well-nigh conclusive against a change.

24. No judge has asked to be relieved of the "burden" of sitting alone. There is, indeed, acute awareness of the different burdens which sitting in a plural court would involve.

25. The justice of the present system, having regard to the usual level of acrimony of political argument here, has scarcely been called in question, but a change would not only put its justice in issue but lead to a whole new set of complaints and problems.

Lowry.

21.8.86

Appendix 1 (to LCJ N. Ireland note 21-8-86)

Diplock paragraph 39

39. We have considered carefully whether trial without a jury of cases on indictment ought to be undertaken by a single judge or by two or more sitting together. We think that in any event the jurisdiction should be confined to those judges who are already qualified to sit on trials upon indictment and are experienced in this class of judicial work: that is to say, members of the Court of Appeal and the High Court and Judges of the County Courts. The total strength of the Appeal and High Court benches is seven. There are the same number of County Court Judges. This, in itself, would render impracticable trial by a plurality of judges in any significant number of cases—and terrorist crime at present constitutes the bulk of the calendar of indictable crime. But we should in any event recommend trial by a single High Court Judge or, in the less serious cases, by a single County Court Judge, in preference to a collegiate trial. Non-jury trials in civil actions are always conducted by a single judge alone. Our oral adversarial system of procedure is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made.

Appendix 2
Gardiner paragraphs 30–33

30. The next question is whether a trial without a jury should be held, as it now is under section 2 of the 1973 Act, by a single judge. The Diplock Commission considered this, and concluded in paragraph 39 of their Report that they favoured a single judge court. We did, however, consider two suggestions which were put to us by various witnesses: namely, that the court should consist of a plurality of judges, or that it should consist of a judge and two lay assessors.

31. On the first of these suggestions we were given no convincing reasons why a plural court would be preferable. We agree with the Diplock Commission who said in paragraph 39 of their Report:

> "Our oral adversarial system of procedures is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made."

There is also a practical reason for adhering to the present system of a single judge. The provision of six courts, each consisting of three judges, would require 12 more judges; as this is more than half of the present strength of Queen's Counsel at the Northern Ireland Bar, from whose ranks judges are normally appointed, this would be an unacceptable weakening of the Bar at a time when its numerical strength is barely adequate to meet the many demands upon it. We conclude that any substantial increase in the number of judges for the purpose of constituting plural courts would be likely to produce further difficulties and delays and so defeat its purpose.

32. The other proposal for a court consisting of a single judge and two assessors recognises the difficulties mentioned above. However, it has its own problems, and those urging the appointment of assessors did not agree on either the source from which assessors should be drawn or what the respective functions of the judge and the assessors should be. It was suggested that Justices of the Peace should be empanelled for this purpose. But Northern Ireland Justices of the Peace have neither the jurisdiction nor the experience of their counterparts in England and Wales, and could not be made to accept a function for which they have not been appointed. Moreover, assessors, from whatever source obtained, would presumably be selected from a list on a rota system in much the same way as juries, and would be exposed to exactly the same pressures that made the jury system inappropriate. Our conclusion is that a trial with assessors is not a practicable proposition.

33. While recognising that the need to decide all the relevant issues of fact and law is an onerous task for a single judge and that a judge sitting alone may on occasion make an error, we consider that the appeal without leave provided for by section 2(6) of the 1973 Act offers a reasonable safeguard in this connection. **We recommend that the courts under section 2 of the 1973 Act should continue to be constituted by a judge sitting alone.**

appendix 3
Baker paragraphs 109-126

This assumes miscarriages of justice;

(d) The burden on the judges, especially in the so called "supergrass" cases. They are not complaining;

(e) The return of juries would emphasise the responsibility of the citizen in the administration of justice. This is a sentiment with which few would quarrel but the question is can it be done now? The answer from many sources is "No".

I agree. Would there be juries in any trials if Sinn Fein came to power? One suggestion made for the first time at a late stage is that juries should be brought from the mainland to try scheduled cases. This, although intended to be helpful, seems to me to be so impracticable and open to so many objections that I dismiss it without further discussion.

Composition of the Court

109. Turning now to the proposals for the composition of the court with personal experience of having sat in England and Wales in courts of five judges, three judges, two judges and single judges, with or without juries; with assessors hearing appeals on the taxation of costs; and with magistrates, I have an open mind and no strong objection to any. Normally with magistrates at Quarter Sessions, now the Crown Court, the chairman conducts the trial itself with a jury, then all confer on sentence. But there is a jurisdiction, namely appeals from the decision of magistrates at Petty Sessions, which are by way of rehearing of the evidence and which all present participate in the decision.

110. "Strong objection" means what it says; I have always had a slight bias against two judge courts but recognise that it is probably based on a somewhat disastrous King's Bench Divisional Court which, before 1939 heard County Court appeals, coupled with waste of time, money and effort if in a civil appeal there is disagreement and a rehearing before 3 judges is ordered. Nowadays because of the need to conserve judge power and to cope with a backlog of cases, two judge courts often comprise the majority of those in the English Court of Appeal Civil Division. The concern for Northern Ireland is of course about the composition of the Court for the trial of serious crime including the long "supergrass" cases, which is a rather different problem. There is an underlying and widespread feeling of unease about trial by judge alone which gives rise to the suggestions that the non-jury court should be composed of:

(i) three judges;

(ii) two judges;

(iii) a judge with assessors or RMs

rather than a single judge.

111. These suggestions were canvassed in 1973. The then Attorney General, Sir Peter Rawlinson, answered them in detail.[1] Nevertheless an amendment moved by Mr Merlyn Rees MP[2] that the court should consist of a presiding High Court judge and two other persons who might be High Court or County Court judges or practising barristers or solicitors of not less than 10 years

[1] Parliamentary Debates, Standing Committee B, 1972–73, Vol 2, 15 May 1973, Cols 126–133.
[2] Parliamentary Debates, Standing Committee B, 1972–73, Vol 2, 21 May 1973, Col 188.

standing was carried by 13 to 11 (12 opposition members and Dr Ian Paisley MP against 11 government supporters).

112. But the Diplock recommendation[1] that trials of scheduled offences should be by a judge of the High Court or a County Court judge sitting alone with no jury was restored at the Report Stage of the Bill by omitting Mr Merlyn Rees' amendment and enacting Section 2(1) of the EPA 1973 which has stood without amendment for over 10 years and is now Section 7(1) of the EPA 1978. I note in passing that there is no definition of "Court" save that it is "without a jury". This seems to be because the trial on indictment of a scheduled offence is held only at the Belfast City Commission—a single judge court. As Dr Paisley voted for the amendment it is not surprising that the DUP submission to me, while recognising the immense difficulties of having juries, to whose return they look forward, and understanding the need for trial by judge alone, believe that as an additional safeguard consideration should be given to a panel of three judges.

Three or Two Judge Courts

113. Diplock had concluded that the strength of the NI Appeal and High Court Bench, namely 7, with the same number of County Court judges "in itself would render impracticable trial by a plurality of judges in any significant number of cases". He added that our oral adversarial system is ill adapted to the collegiate conduct of a trial of fact and gave instances of procedural difficulties[2] which would gravely inconvenience the progress of the trial. Gardiner also considered a court with a plurality of judges. He agreed with Diplock's conclusion pointing out that to man with three judges the five non-jury courts then sitting or the six which they hoped would sit continuously would require 12 more judges which was over half the strength of Queens Counsel at the NI Bar. They concluded that any substantial increase in the number of judges for the purpose of constituting plural courts would be likely to produce further difficulties and delays and so defeat its purpose[3].

114. With diffidence, I had some doubt about procedural problems other than delay so I have ventured to consider the only three judge courts for the trial of criminal offences of which I have heard, excluding Courts Martial of three or five officers sitting with a Judge Advocate, namely:

(a) *In India*

In 1917 a Committee was appointed under the presidency of Sir Sidney Rowlatt, a judge of the English High Court, to consider criminal conspiracies connected with revolutionary movements in India and to advise how they could be dealt with effectively. They recommended "that provision should be made for the trial of seditious crime by benches of three judges without juries or assessors and without preliminary commitment procedures or appeal". *The Anarchial and Revolutionary Crimes Act 1919* (Government of India) established such a court when necessary to try offences connected with any anarchial or revolutionary movement. The majority opinion of the court prevailed. I have no information about how often such courts sat or whether they were considered successful, nor have I been able to discover any procedural difficulties anticipated or real.

[1] Recommendation (g), page 3, Cmnd 5185.
[2] Para 39, Cmnd 5185.
[3] Para 31, Cmnd 5847.

(b) *In the Republic of Ireland*

Article 38 of the Constitution of 1937 provided that Special Courts might be established in certain circumstances. *The Offences Against the State Act 1939, Part V, Section 35(2)* enabled the Government to make a proclamation "if and whenever and so often as (it) is satisfied that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order . . ." bringing Part V into force and then declaring certain offences to be scheduled offences[1]. The Attorney General may request that non-scheduled offences shall be tried by the Special Court. Appeal lies to the Court of Criminal Appeal.

The Special Court consists of an uneven number (not less than 3) of members as the Government shall from time to time determine[2] appointed from judges of the High Court or Circuit Court, justices of the District Court, barristers or solicitors of not less than 7 years standing or officers of the Defence Forces not below the rank of Commandant. Verdicts are by a majority so if a third of the panel thought the accused not guilty he is still convicted. Disclosure of whether or not a verdict is unanimous is forbidden[3]. The Court has control of its own procedure for all purposes and may make Rules therefor.

A national emergency was declared by Dail Eireann in 1939 and has existed ever since. The earlier courts consisted exclusively of military officers but now in a Special Criminal Court set up by order of 31 May 1972 (proclamation 26 May) the norm is a 3 judge court with a High Court judge presiding and judges of the Circuit Court and District Court. Sometimes two Circuit judges sit with a judge of the District Court or a High Court judge with two District Court judges. I have set out this detail because many witnesses have urged me to consider the Dublin three judge court. They ask "if it works there why not in Belfast?"

A paper delivered as a public lecture at Trinity College Dublin by (now) Senator Mary Robinson, Professor of Penal Legislation, Constitutional and Criminal Law and Evidence and later published[4] was critical of several aspects of the court, recommending that membership should be confined to the judiciary, that it should be scrutinised continually especially in respect of the trial of persons having no connection with any unlawful organisation or subversive group and that it should sit in one division only and always be presided over by a High Court judge. I omit reference to her arguments about its constitutional legality but note that she says in relation to the court ruling on admissibility of statements and then the weight to attach to them ". . . one cannot but be impressed with the way in which the court has discharged this difficult duel function. Indeed the present Special Criminal Court operates very well when sitting in one chamber presided over by a High Court judge and covered adequately by the press". There was no mention of any of the difficulties over procedure feared by Diplock and Gardiner nor did I hear of any during my visit to Dublin. Unfortunately it was not possible to see the court in action as it was not sitting but I was told it worked well and posed no problems although there was still some disquiet among law abiding thoughtful citizens. But the real point of difference is that the volume of work is and always has been entirely different

[1] Section 36(1).
[2] Section 39(1) (3).
[3] Section 40(1).
[4] Dublin University Press 1973, The Special Criminal Court.

from that for the non-jury courts in Belfast. There has never been more than one court sitting at a time. There is no backlog of work but relatively few (under 60) cases were tried in 1982.

115. The strength of the NI Bench and Bar is now in January 1984:

The Lord Chief Justice (LCJ)
3 Lords Justices (LJJ)
5 High Court Judges (HCJ)
The Recorders of Belfast and Londonderry and 9 other County Court Judges (CCJ)
28 Queens Counsel
Junior Barristers
33 over 10 years standing
41 over 7 years standing
128 under 7 years standing
17 Resident Magistrates (RM)
10 Deputy Resident Magistrates

116. The trial on indictment of a scheduled offence must be held at the Belfast City Commission[1]. The judges of the Belfast City Commission for such trials are the LCJ, the LJJs, the HCJs, the Recorders and, at the request of the LCJ, CC judges who all in fact take a turn and try about two thirds of all scheduled offences except murder trials. In 1978 the Lord Chancellor undertook that deputy judges would not be employed on scheduled cases. The LCJ and the three LJJs have to man the Court of Appeal for its civil appeals. The HCJs can sit in the Court of Appeal in a criminal cause or matter. They are also responsible for the work of the Queens Bench, the Chancery Division and the Family Division with one judge having particular responsibility for each of the latter two. Then there is the Crown Court whose jurisdiction to try non-scheduled offences with a jury can be exercised by the LCJ, LJJs, HCJs and CCJs. The CCJs have also to dispose of the work in the County Courts. There is a provision which would allow the appointment of two more High Court judges[2]. Several witnesses have urged that this be done immediately to keep up with the work as it is, and reduce delays. (Since this was written one of the two has been appointed). But as has been for long the complication in England, there is little available court accommodation and problems with what there is in that there are not enough large courts. The pattern in recent times has been for two courts to sit at the Crumlin Road hearing long scheduled cases and one to take pleas of guilty and short trials of scheduled offences. There is support for a fourth court to sit. Of the longer trials one at least has been a "supergrass" case lasting for months with many accused—there were 38 in the Black case. When I visited the courts at Crumlin Road two courts were engaged on "supergrass" trials although one had had to be adjourned for that particular day so that court was not in session.

117. In 1980 there were four or five courts normally in session in the Crumlin Road Courthouse[3]. Many counsel are involved and have commitments in such cases which must be expected to cover the whole of 1984. A two judge court

[1] EPA 1978, Section 6(1).
[2] Section 2(1) Judicature NI Act 1978.
[3] "Ten Years On", page 58.

would require three more judges, and three judge courts, six more. The LCJ submits, and I accept, that to provide even three new judges would so deplete the senior bar, that even allowing for the appointment of some new QCs the Bar's ability to provide counsel for the defence of persons charged with scheduled offences could not be guaranteed. Seven were called within the Bar in March 1983 and it has to be emphasised that there are only 33 juniors of over 10 years standing. As the figures show the explosion in the strength of the junior bar has been more recent in Northern Ireland than in England hence the 128 under seven years standing. Finally expert cross-examination is especially vital to test witnesses on the voir dire (the trial within a trial on the admissibility of statements) and also the evidence of informers. The alleged terrorists realise this for not only do they now recognise the court but they seek the services of the supposedly best counsel. Much delay has to be attributed to attempts to permit them to have counsel of their choice by adjourning or delaying trials at their requests[1].

118. Nor must the effect of the depletion of the senior bar on the ordinary criminal work and the civil work of the courts be overlooked. The wave or its ripples will affect them all. Would it be possible to have more judge power from Great Britain? This suggestion had no support. There were many objections on the English side that there are not enough judges to cope with the work there and even retired judges are fully engaged. Three additional LJJs have recently had to be appointed. There was so much opposition in Northern Ireland to the idea that I have not even asked for an opinion from Scotland. The main points were:

(a) trial by "Brits" even as a junior member of a collegiate court would cause massive reaction by both Republicans and nationalists. They would not have the feel of the local community and might unwittingly cause chaos in sensitive areas. I appreciate this fear after considering Northern Ireland for this Report over six months. Even the use of an English Circuit judge to take jury trials, releasing a Northern Irish Circuit judge to sit on a scheduled case court would be highly unpopular.

(b) English judges would be regarded as prime targets, security would be difficult and it would be wrong to ask them to take the risk.

119. I have already referred to the absence of any evidence of procedural difficulties in the Special Court in Dublin. This is not to say that they would never arise. The single judge in Northern Ireland always writes his judgement and gives his reasons stating the law as he has applied it to the facts he has found. Another judge while reaching the same conclusion may take a different route, adopt different reasoning or not find exactly the same facts. Are there to be three judgements from which it will be obvious that there has been some disagreement, or only one? Two judges would have to be unanimous for a guilty verdict but what of three? Suppose two consider there is a prima facie case or that a statement is admissible, the third does not: what then? How and by whom are the teams to be picked and will a very junior judge never be in danger of being over-awed by the forcefully expressed views of an experienced senior? From my own past experience as junior in a two judge court I know how worrying and difficult it was to stand firm against such psychological pressure

[1] Para 176.

and the relief when a new court supported my view. There are those who think that the existence of sole and undivided responsibility backed as it is by an unfettered right of appeal to a three judge appeal court assures that the interests of the accused receive the maximum consideration. Conversely the sharing of responsibility would not necessarily promote his interests to the same extent. At present the case of a person accused of a scheduled offence is heard by four judges—the trial judge and three in the appeal court. A plurality of trial judges could well make the manning of a three judge appellate court impossible. Of course procedural difficulties may be overcome. Administrative rules are servants not masters. But would the court be a better court or only a different court? Of one thing I am certain: in Northern Ireland a plural court be it with judges or assessors would be subject to as much if not more criticism than the trial by judge alone. No judge is in favour as far as I am aware and most counsel and other lawyers with whom I have spoken are against. One has described any such change as "a recipe for disaster"; others consider that a change from trial by judge alone would tend to destroy public confidence in the judiciary—a cherished aim of the terrorists—and would be pointless and harmful. The LCJ considers that no valid compromise is possible between the trial of scheduled offences by judge alone and trial by jury.

120. That judges have been and probably will be terrorist targets is not a factor which has been put in the scales. In any event two or three judges would be no less vulnerable than one.

121. In 1975 Gardiner reported "... we were given no convincing reasons why a plural court would be preferable"[1]. If the single judge courts work well then it must be for those who advocate change to a tribunal other than a judge and jury to produce good reasons. The onus here is on the "reformers". While many organisations and indeed lay individuals, with some academic lawyers and a few in practice, advocate a plural court or alternatively a court composed of a judge and assessors being laymen or RMs, there are only two arguments in support:

(a) Judges are case hardened;

(b) It would look better.

Case hardening

122. This is one of those much used expressions, which by repetition is given validity. I understand it to mean that the judge has heard it all before; therefore he does not believe the accused; therefore he is or becomes prosecution minded or more prosecution minded. I accept at once that it is possible. There were some metropolitan magistrates in my early days at the Bar who were to be avoided if at all possible even in, or especially in motoring offences. Juries have been known to step up their conviction rate after hearing a few cases and recently a junior barrister in England has been publishing his ideas that English judges are prosecution minded. Whatever the facts, to which I shall come in a moment, it is a poor argument for a plurality of judges. Two or three case hardened judges would be no better and indeed worse than one; doubling or trebling would be no remedy for this alleged judicial condition.

[1] Para 31, Cmnd 5847.

123. Of the fact of "case hardening" I have discussed the possibility with many Northern Ireland judges. The most important point to emerge is that while none acknowledges that it has happened even to one of his brother judges, the danger is well recognised and I am convinced that each one is continually thinking of the possibility and warning himself against leaning or even appearing to lean to the prosecution or against the defence. Theirs is a more positive approach than that of the English judge who of course does not have the same problems. So it may well be that those who with perfect honesty and real belief advance case hardening as an argument are, on analysis, saying no more than that an experienced judge knows what is likely to happen in given circumstances or when and where a defence is likely to run into difficulties. That is not to say that any Northern Ireland judge ever takes over the prosecution. They do not and indeed when sitting alone are very careful never to assist the Crown, even on a technicality.

124. Some seek to support the allegation of case hardening by statistics. The argument is that a fall in the acquittal rate must be caused by the judges who have not found so many, or proportionately so many, not guilty, and the reason they have found more accused guilty is because they the judges are case hardened. Even in 1979 when on one view of the statistics (set out in full at Appendix H) acquittals had been falling and on another view steady save for 1977, it was accepted that a possible reason was the greater care by the prosecuting authorities in the preparation or selection of cases[1]. This must be so. Presumably those who base an argument on a fall in the acquittal rate must accept that a rise in the rate, as has happened in 1981 and 1982, heralds a new era. I do not believe the figures prove or even tend to prove anything.

125. The relevant figures taken from Appendix H are those which relate to actual contested trials in scheduled cases, that is disregarding pleas of guilty. They are:

Year	*Found Guilty*	*Acquitted*	*Proportion of Total (ie those found Guilty and those acquitted) who were acquitted*
1973	37	23	38·33%
1974	350	155	30·69%
1975	323	86	21·03%
1976	255	68	21·05%
1977	371	57	13·32%
1978	189	48	20·25%
1979	137	38	21·71%
1980	78	19	19·59%
1981	68	35	33·98%
1982	82	44	34·92%
1983 to 1 October	46	19	19·23%

Column 4 is of course the vital column. The real question must be whether anyone or any appreciable number of accused have been wrongly convicted. This is wider than but would include those who are or may be innocent. One

[1] "Ten Years On", page 61.

QC told me of a case in which he would have expected a jury to acquit. He put it no higher than that. Other persons have said there have been such cases and have promised to send me details. They have not done so. So I have heard of no instances of a person being wrongly convicted nor has the LCJ.

126. It is unnecessary to say more about the suggestion that a plural court would look better. It is no more than a cosmetic argument, and although honest, I would ask "look better to whom?" Even critics at the UN do not apparently attack the one judge courts. There is much to be said for the wisdom of Lord Falkland who said in 1641 "If it is not necessary to change it is necessary not to change".

Appendix 4 ~~APPENDIX A~~

CONFIDENTIAL

Trial of Scheduled Offences
One Judge or Three

INTRODUCTION

1. In view of the success in Committee of the opposition amendment, it may be helpful to set out my views in a more discursive way. I consider that the amendment is misguided and that if trial by a single judge is not restored the general administration of justice will suffer. I now proceed to analyse the main points.

ACHIEVING A JUST RESULT

2. I consider that the single judge method is much better forensically and it is notable that, even in the most important civil cases, trial by a single judge at first instance has been in modern times the completely accepted alternative to trial with a jury.

He will have to give a reasoned judgment which, like the decision of a judge sitting alone in a civil case, will be more open to review on appeal than the verdict of a jury.

The fact that he must exercise sole responsibility and that he is seen to be doing so is the best possible guarantee that an accused of whose innocence a reasonable possibility exists will not be convicted.

I have not heard it suggested that judges sitting alone will be unfair or that they are more likely to reach wrong conclusions than three judges. I think this is a point which requires emphasis.

I would also draw attention to the intellectual difficulty, (which is not shared by the members of a jury or court-martial), of reaching joint conclusions and embodying them in the kind of judgment which must be given in order to afford a fair chance on appeal. There is the further practical difficulty of reaching an agreed text within an acceptably short time. The difficulty will be psychologically increased by the need or desire to defer to the views of colleagues of different judicial rank or different background.

SAFETY OF THE JUDGES

3. This is relevant, partly because of the responsibilities of the security forces. It is, in my opinion, a mere assumption that the

degree of risk, (whatever it may be now), will be appreciably increased by non-jury trial or that there will be a greater risk to a judge sitting slone. This purported analysis of the terrorist mind does not convince me at all. If the terrorist reaction to the carrying out of one's judicial duties is rational, which I doubt, who is to say that the presiding judge who delivers the judgment of the Court or pronounces a 10 or 15 year sentence will be any safer than a single judge who does the same thing? Or that either would be in greater danger than a judge imposing sentence now or even than a judge who virtually decides the case by admitting a confession after saying in open Court that he disbelieves the accused's allegations of torture?

On the contrary, assuming that only a minority of cases put the trial judge at risk, three judges will be in danger in those cases (and the security forces will have three to think about). Furthermore, if a Catholic judge is sitting with two Protestants and an I.R.A. terrorist is convicted and sentenced, will not that judge be vulnerable as "a lackey of a foreign power" to a greater extent than if he were trying the case on his own and seen to be giving his own impartial rulings, findings and sentence?

In any case the safety of the judges, while important, is not the paramount consideration, and ought to be a factor only if the risk occasioned by a single judge trial is significantly greater.

PUBLIC CONFIDENCE

4. The public may be divided into a small section which assumes that the judges, even if they are sometimes wrong, are honest, a happily even smaller section which assumes that they are dishonest and a large section which is composed of people who either take no interest in the question or could be persuaded one way or the other. The last is the subsection to think about. The abolition of jury trial admittedly will focus rather more attention, (I advisedly put it that way) on the actions of the judge and thereby lead to more speculation about his probity. I do not think that the "speculators" will give any more or less credence to a judge whose motives they

suspect, whether he is sitting by himself, or as presiding judge or as a member of a Court of three. Indeed, if a Court of three fails to reach agreement, political and religious differences will be highlighted and commented on as never before.

It is too much to expect that all the members of a Court of three, even when they agree, will always reach their conclusions by the same route, and for the purpose of appeal it may be necessary to indicate the differences in approach. This would be far more likely to undermine confidence than single-judge decisions and the alternative of not announcing reasons is unacceptable, because it takes away many of the benefits of an appeal. It would also reduce public confidence.

To say that it is a big step from jury trial to single-judge trial and that therefore three-judge trial is an acceptable compromise is, to my mind, an example of confused thinking. One must go back to paragraph 2 above and answer the question, "Given that juries are suspended, is trial by a single judge as good a method as any other of ensuring a just result?" I submit that it is and that no-one has credibly argued the contrary.

The next argument against single-judge trial is that it involves "too great a responsibility". This argument must, for the moment, be considered by itself and not as part of the "just result" or "safety" argument. Of course the trial and possible imprisonment of one man by another is a grave responsibility, but it must remain a grave individual responsibility even if it is borne by three judges or twelve jurors; it cannot be lessened appreciably, if at all, through being shared. If one man is thought capable of reaching the right decision, then he must and can accept responsibility. It is necessary, also, to appreciate the kind of decision which the tribunal of fact must make. If the decision is whether to declare war, or enter Europe or dissolve Parliament, there are innumerable points to consider and the decision one way or the other may lead to triumph or disaster. There are many other important decisions in business and private life which may have an irrevocable effect. Most of these are preceded by discussion and possibly by agonies of doubt. The decision-making process in a criminal trial is quite different: the case must be decided on the

evidence alone, and if there is any reasonable doubt the accused must be acquitted. I say all this to emphasise my view that the responsibility of a single judge would be by no means intolerable. One must also remember the responsibilities which both High Court and County Court Judges are expected to discharge as a matter of course. I would never underrate the importance of the result of a trial on indictment, but there are other issues of fact which have to be decided by a single judge and which are no less important to the individual.

There is another undesirable feature of three-judge Courts, so far as public confidence is relevant. The composition of each Court will involve a degree of selection and "team-building" by the Lord Chief Justice which I regard as very likely to attract comment and as tending to undermine confidence. Hitherto judges have taken their turn and there has been no selection of judges. This has worked well at High Court and County Court level.

ADMINISTRATION OF JUSTICE

5. If the advocates of three-judge Courts had a better case, particularly on the "justice" issue, I should be diffident about pointing out the very disrupting and delaying effects of yielding to their arguments. It is obvious that, even if additional or deputy judges are appointed, one cannot get through the same number of cases if the judges have to sit in threes, and it is equally clear that any method of recruitment will be a severe strain on the ability of the profession to carry out its duties, including the duty of providing adequate defence of the accused. I need not dwell on the arrears of civil work or on the desirability of speedy criminal trial, particularly if the chance of bail is to be reduced.

CONCLUSION

6. I would urge that, since a bi-partisan approach to this Bill has proved impossible, the original formula of single-judge Courts, as recommended by Lord Diplock's Commission, should be restored, unless the Government has been actually persuaded that three-man Courts are to be preferred. The issue is not something, (like capital

punishment or even trial by jury), on which the instinct of the ordinary member has to be given free rein, as perhaps expressing vicariously the feelings of the country as a whole, and I do not believe that the average member of the public in Northern Ireland has any preference as between single-judge and three-judge trial.

7. I apologise for the length of this Note and can only make the excuse that I think the subject is of importance to the working of the Courts and the administration of justice in Northern Ireland.

23rd May, 1973. R.L.

Appendix 5

One Judge or Two in Diplock Courts?

Memorandum by Lord Chief Justice of Northern Ireland

INTRODUCTION

1. This memorandum proceeds on the basis that jury trial cannot yet be restored and that the only practical alternatives are trial by one judge or two.

2. One-judge trial has been successfully used for ten years and therefore the onus to justify a change is on the advocates of two-judge trial.

POSSIBLE REASONS FOR A CHANGE

3. I have not since 1973 heard any reasons advanced in support of a change and, when I do, I may have further comments. One thing, however, is clear: if the idea is to introduce two judges because the judiciary has become "case hardened", then it is misconceived, because, if one of two judges is thus afflicted (or both), plurality will certainly not provide a remedy for this judicial condition.

4. If it could be credibly demonstrated that, after trial at first instance and, if necessary, resort to the Court of Appeal, there are even a few innocent persons who have been convicted pursuant to trial in the Crown Court, then (without prejudice to its being a better method) there might be an argument for a different method. But I believe that over the last ten years mistaken convictions in Diplock courts cannot be proved (or even reasonably inferred), and certainly not in numbers which would justify departure from a tried and tested method.

5. It was originally suggested that courts of two or three judges would be safer for the judges. This is not the most important consideration and in any case this suggestion is a mere assumption. No judge is asking the Government to act upon it. If there are a few cases which involve a greater risk, it is better that only one judge incurs that risk.

6. Another suggestion in 1973 was that the responsibility of single-judge trial was too onerous. Ten years later no judge is asking to have that responsibility reduced. I would add that the strain of trying to persuade a colleague or of accommodating one's own ideas to his on a

question of fact could more than outweigh any alleged benefit of sharing responsibility.

7. It is, I submit, a mistake to say that public confidence would be increased by the adoption of two-judge courts. In the first place, it would immediately lead to argument as to whether the cases had been properly tried up to the present, and secondly, the pairing of judges together (with the accompanying speculation on the motives of the L.C.J. when "picking the teams"), real or supposed differences of opinion shown on the Bench and differences of reasoning in support of the same opinion (if detected) would tend to destroy public confidence.

GENERAL ARGUMENTS

8. It should not be forgotten that Lord Diplock's commission recommended single-judge courts and that, after Mr. Merlyn Rees's amendment in favour of three-judge courts had been carried in Committee (13 to 11, that is 12 opposition members and the Rev. Ian Paisley against 11 Government supporters), the single judge was restored at the Report stage. There is no reason in 1983 after ten years' practical experience of the method to say that Lord Diplock and the Government were wrong.

9. At present, and also in a jury trial, the single judge takes responsibility for ruling on two crucial points in cases where they arise -

(1) the existence of a prima facie case; and

(2) the admissibility, when contested, of the accused's statement.

More generally, in important civil cases (often more difficult because the decision depends on the balance of probabilities) trial by a single judge is the long accepted method. True, in a criminal trial liberty is at stake, but the decision is easier because of the need to be satisfied beyond reasonable doubt.

10. I believe that the existence of sole responsibility has ensured, and will continue to ensure, on questions of fact, as it has done (with or without a jury) on questions of law, such as admissibility of evidence or whether to find a prima facie case, that the interests of the accused receive the maximum of consideration and conversely that the sharing of responsibility would not necessarily promote the interests of the accused to the same extent.

11. Two judge trial could result in superficial consideration of the issues or, in the alternative, agonising and lengthy discussion, and will in many cases make it difficult for the court to produce a judgment based on reasoning in which both members of the court concur, even if they are satisfied of the guilt of the accused.

PRACTICAL CONSIDERATIONS BASED ON NUMBERS

12. It should go without saying that no-one holding a lower judicial appointment than county court judge should sit. Resident Magistrates are not even entrusted by Parliament with bail applications and in 1978 the Lord Chancellor undertook that deputy judges would not be employed on Diplock work. To appoint four or five adequate new High Court and county court judges would deplete the Senior Bar so badly that, even allowing for a few new silks (the last call of seven juniors within the Bar having been made in March 1983), the Bar's ability to provide for the defence of persons accused of scheduled offences could not be guaranteed.

To clarify the last point, I would state that expert cross-examination is vital for the purpose of testing police witnesses at a trial within a trial and also with a view to querying the evidence of informers.

13. I respectfully consider that, as a possible solution to the shortage of judges for two-judge courts, it would be pointless and harmful to try to cut down the number of Diplock trials. To remove some lesser offences from the schedule (a very reasonable object in itself) would not do much, because it will be found that the kind of offence which could realistically be removed from the schedule is at present largely the subject of a short trial or a plea of guilty. To go further in the search for a reduced trial programme would unsoundly sacrifice Diplock trial to the false ideal of a two-judge court.

OTHER PRACTICAL POINTS

14. As far as I have discovered, the two-judge suggestion is not the monopoly of one group or party and I believe that it can without risk be resisted on its merits. I further suggest that no change ought to be recommended unless it is thought likely to remedy a deficiency which is perceived to exist in the present arrangements.

15. Applying this test, two judges will be no better than one, since both methods dispense with a jury and with all forms of lay participation (as they must).

16. But to appear to acknowledge a deficiency in the one-judge method will greatly strengthen the foreseeable campaign for more radical changes, once the two judge method is seen to be no better or possibly worse.

17. The making up of two-judge courts will involve an element of selection which could easily invoke political comment and speculation from which hitherto we have been mercifully free.

CONCLUSION

18. In case it may be helpful, I enclose at Appendix A my note dated 23rd May 1973 which between Committee and Report stage I submitted to the Attorney General and copied to the Lord Chancellor, the Secretary of State for Northern Ireland and the Lord Advocate. Appendix B is an extract from the Report of the Gardiner Committee (paragraphs 30-33) endorsing the one-judge method.

19. To put the matter shortly -

(1) We now have ten years' experience of single judge trial which, I submit, has served us well both practically and politically (so far as non-jury trial can ever be accepted)

(2) The discontent about informer evidence will not be removed by two-judge courts.

(3) Two-judge trial would not be more just, and certainly not better for the accused.

(4) It would also be unworkable from the numbers standpoint.

(5) So far from satisfying its advocates, two-judge trial could fuel the campaign to destroy the Diplock method, and this result may even be the objective of some campaigners.

(6) The case for a change has not been made out.

15th November. 1983.

Lowry.

Appendix 6

ROYAL COURTS OF JUSTICE
BELFAST
BT1 3JF

4th August, 1986

SECRET

Dear P H S,

Having regard to our talk last Monday, I am concerned lest, despite the views of the Lord Chancellor and the Law Officers and the vigorous attitude of the Secretary of State at the Inter-governmental Conference in May (of which he was good enough to tell me), officials might still be prepared to entertain the idea of 3-judge Diplock courts.

I shall not rehearse arguments with which you are familiar: see the Diplock Report paragraph 39, Gardiner Report paragraphs 30-33, Baker Report paragraphs 109-121 and my own notes "One judge or three" dated 23rd May, 1973 and "One judge or two" dated 15th November, 1983. See also the Attorney-General's letter to me dated 31st October, 1983, containing this paragraph:

> "Both Patrick and I are in complete agreement with you that there is no place for 'lay assessors', magistrates or a plurality of judges in the trial of scheduled offences, and we welcome your assurance that the judges, who bear the burden and heat of the day in these matters, do not seek any change."

(We still do not seek any change.)

I assume that 3-judge courts are not in reality thought likely to promote, on the part of nationalists, increased confidence in the Diplock process, if that is lacking, and that the question among officials is whether it might be expedient to give the Fine Gael Government a symbolic political victory on a point which has recently been their sole court concern. An inducement to make this concession may lie (1) in the probability that concessions about the R.U.C. and U.D.R. would arouse greater reaction and (2) in the fact that Mr. Paisley voted with Labour for 3 judges in 1973. The first point is no doubt right but the second does not, I believe, now hold good: to concede Irish Government demands would be seen as giving in to Barry and Mallon over the heads of the Lord Chancellor, the Attorney-General and the L.C.J.

A look at recent statements in the Press confirms this reading of the situation. The "Irish Times" of 13th June contained a piece by Conor O'Clery which ended thus:

> "The reform of the Diplock courts in Northern Ireland will dominate to-day's meeting between Mr. Scott and Mr. Dukes.

/It is

It is understood that the Northern Secretary, Mr. King is not dogmatically opposed to the Irish argument for increasing the number of judges in Diplock courts from one to three. This reform (sic) is being strongly resisted by the legal establishment in the North, led by the Lord Chief Justice, Lord Lowry, who has the strong backing of the Lord Chancellor, Lord Hailsham. According to sources in London, the key to this problem lies with Mrs. Thatcher who will have to be persuaded that it is in British interests to face down Lord Hailsham." (my emphasis.)

I refer also to Mary Holland in "The Observer" of 20th July, starting with the headline "Diplock Courts to be axed", and continuing:

"The controversial Diplock courts in Northern Ireland are to be replaced this autumn by three-judge courts to try terrorist crimes.
"The new courts, agreed in a reform package by British and Irish government officials, will replace the present system in which a judge sits alone without a jury. The news comes in the wake of the collapse last week of the latest supergrass trial."

After listing other proposed changes, the article continued:

"The news of the reform package, which will please the Catholic community and anger Protestants, comes at a time when officials in London and Dublin are trying to repair the damage done to The Anglo-Irish agreement by the decision to allow Orange marches to pass through Catholic areas of Portadown last weekend."

And Conor O'Clery wrote in the Irish Times last Friday (1st August):

"The prospect of an 'autumn package' of reforms from the Anglo-Irish Intergovernmental Conference has distinctly improved since the Minister for Foreign Affairs, Mr. Barry, and the Northern Ireland Secretary, Mr. Tom King, met in London on Tuesday evening.
"Mr. King, who seemed anxious before the July 12th marching season to dismiss the significance of the Anglo-Irish Agreement, is now more enthusiastic that it should work to the advantage of both sides, according to sources in London.
"Despite reports to the contrary in the British press, some of the key issues between the two Governments are still open for continued negotiation. These include the Diplock courts, which at present have only one judge, sitting without a jury. The Irish Government has argued that three judges would make the courts more acceptable.

/"The

"The Lord Chancellor, Lord Hailsham, has been opposed to such a reform, but it was learned yesterday that he is still involved in exchanges about the judicial system and that the door has not been closed on such a development, though it will involve a major concession on his part." (My emphasis.)
(The rest of the article deals with marches.)

These mixtures of fact and fiction (as I believe them to be), which seem to be inspired by "hand-outs", are alarming to me and evoke a strong judicial reaction of concern here.

If you are pursuing political extradition as a desired consequence of Ireland's signing the European agreement, you may on past form expect them to seek 3-judge courts as the "only hope" of getting the legislation through. I would advise you to approach such a proposition with very great reserve, determined not to mistake the shadow for the substance. You will also recall that the Supreme Court, when extraditing Shannon (accused of murdering Sir Norman Stronge), rejected the argument against extradition which was based on the likelihood of "unfair trial".

I know that you and your colleagues are searching for the right answer and, in my turn, I am trying to help, not hinder. But I earnestly beg you not to be tempted by the misguided plan of trying to persuade Ministers to reject the advice about the make-up of the courts which has been consistently tendered to them since 1972.

I am convinced that, quite apart from the cogent judicial and administrative considerations, the political effect of introducing 3 judges would be very damaging indeed to the Bench and to criminal justice here and therefore could not be responsibly recommended.

In view of our serious and helpful discussion and your great courtesy to me, I think it only right to send my letter to you, but I feel confident that you will take an early opportunity of showing it to the Secretary of State, as I would wish.

With kind regards,

Yours sincerely,

Robert Lowry.

Sir Robert Andrew K.C.B.,
Permanent Under Secretary,
Northern Ireland Office,
Stormont Castle,
Belfast,
BT4 3ST.

CONFIDENTIAL

ccPC

AP

Prime Minister

You will Agree this choice?

CDP 17/8.

PRIME MINISTER

THE INTERNATIONAL FUND FOR IRELAND

Both we and the Irish are anxious to press ahead, as soon as possible after the formal agreement to establish the International Fund for Ireland is made, with the designation of a Chairman and Board members, under the arrangements which I described in my minute of 13 August.

2. In exploratory talks with the Irish, it has been agreed that the Chairman should come from the majority community in NI. We have discussed a number of possibilities and have identified Mr C (Charles) F B Brett CBE as someone who would command our confidence and that of our Irish partners in this enterprise. He is not politically (or otherwise) associated with either unionist or nationalist views. Mr Brett is 57; he is a solicitor practising in Belfast; he served as a member of the Board of the NI Housing Executive from its creation in 1971 until 1984, including an effective spell of 5 years as its Chairman; he is a distinguished writer or architectural history and a former member of the Arts Council for NI. His wife is a member of the NI Standing Advisory Commission on Human Rights.

3. I hope you will be able to approve this choice. I believe that Mr Brett will be a strong Chairman who, while maintaining his

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independence will be sensitive to the special demands of this particular post.

4. I am copying this minute to Geoffrey Howe and Sir Robert Armstrong.

N D Ward
(Private Secretary)

for TK

(Approved by the Secretary of State and signed in his absence in Northern Ireland)

16 September 1986

SP

CONFIDENTIAL


16.M.
1936

VC

cc PC

Jane
Top copy attached
C. Tolley

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

16 September 1986

Dear Jim,

International Fund for Ireland

The Prime Minister has noted the Northern Ireland Secretary's minute of 15 September covering the finalised text of the Trilateral Agreement with the Irish and United States governments, to be signed on 19 September.

I am copying this letter to the Private Secretaries to the members of OD(I) and to Sir Robert Armstrong.

yours sincerely,

Charles Powell

(CHARLES POWELL)

J.A. Daniell, Esq.,
Northern Ireland Office.

OD(I)
LPO
FCO
HO
MoD
LPS
CDL
NIO
CS, HMT
AG,
CWO

SLW

CONFIDENTIAL

(1)

Prime Minister
To be aware
CDP
15/9.

PRIME MINISTER

INTERNATIONAL FUND FOR IRELAND

In my minute of 8 September, I promised to let you have the finalised text of the Trilateral Agreement with the Irish and US enabling us to receive the first US tranche of fifty million dollars for the International Fund. I now attach a copy.

2. The Trilateral Agreement is a short and technical agreement concerned with financial arrangements. It involves an undertaking by the UK and the Republic that they will consult the US about the expenditure of its money and take account of the wishes expressed by Congress in the Anglo-Irish Agreement Support Act 1986. This includes a requirement that disbursements from the Fund will be distributed in accordance with the principal of equality of opportunity and non-discrimination in employment and will address the needs of both communities, which of course we will have no difficulties in complying with. The Trilateral Agreement also includes an undertaking by the US to pay fifty million dollars; and a requirement that the money be held in trust by the two Governments in a dollar-denominated account until the Fund is formally set-up. None of the details of this Agreement seem likely to cause political controversy.

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3. We have provisionally agreed with the US and Irish for a signing in Washington on 19 September. The Agreement will come into force immediately but will be laid before both Houses of Parliament in due course.

4. I am copying this minute to the Members of OD(I), the Chief Whip and Sir Robert Armstrong.

N Ward
(Private Secretary)
for TK
(Approved by the Secretary of State and signed in his absence in Northern Ireland)

15 September 1986

JLD

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ANNEX A

AGREED DRAFT

BETWEEN THE GOVERNMENT OF IRELAND, THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE INTERNATIONAL FUND FOR IRELAND

The Government of Ireland, the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter together referred to as "the two Governments") and the Government of the United States of America acting through the Agency for International Development (hereinafter referred to as the "Donor"):

Considering that the two Governments:

i) concluded an agreement dated 15 November 1985 which in Article 10(a) provided that: "The two Governments shall co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years and shall consider the possibility of securing international support for this work"; and

ii) signed a further agreement on 18 September 1986 for the purpose of establishing an International Fund for Ireland (hereinafter referred to as "the Fund") as an international organisation of which the two Governments are members, that Agreement to enter into force in accordance with the terms of Article 14 thereof; and

Considering that the Congress of the United States enacted, and the President signed a law, for the appropriation of $50,000,000 as a contribution to the Fund;

Have agreed as follows:

ARTICLE 1

(The Agreement)* The purpose of this Agreement is to set out the understanding of the Parties to this Agreement with respect to the undertaking described below and with respect to the financing of the Fund by the Donor.

ARTICLE 2

It is agreed that before the establishment of the Fund the two Governments, and after its establishment, the Board of the Fund, shall involve the Donor in substantive discussions in order to take into account, among other matters, the concerns, procedural and programmatic emphases expressed by the US Congress in authorizing and appropriating the assistance granted herein.

ARTICLE 3

(The Financing) As a contribution to the capital of the Fund, the Donor agrees with the two Governments to grant the Fund, under the terms of this Agreement, a sum not to exceed Fifty Million United States Dollars ($50,000,000.00) (hereinafter referred to as the "Grant").

* The titles of the Articles are retained in brackets for ease of reference but will be deleted before signature.

ARTICLE 4

(Condition Precedent to Disbursement) Disbursement of the Grant, in whole or in part, and the issuance by the Donor of documentation enabling such disbursement, will take place only after the two Governments have furnished to the Donor:

(i) evidence of the establishment of a separate US dollar denominated bank account (hereinafter referred to as the "Trust Account") in a recognised bank (hereinafter called the "Trustee Bank") to receive and hold the Grant pending legal establishment of the Fund and satisfaction of the condition set forth in Article 6 herein,

(ii) evidence that the Trustee Bank has been undertaken:

- to hold the Grant in trust for the Fund pending further instructions from the two Governments either to transfer the grant to the Fund or to return the grant, with interest, to the Donor;

- to open a separate account for the interest earned on the Grant, such interest to be at the highest rate consistent with the need for the Grant to be transferred to the Fund on one week's notice;

- to transfer the interest to the Donor for the credit of the United States Treasury;

- to maintain, in accordance with the Trustee Bank's usual accounting principles and practices, books and records relating to the Trust Account, to be audited at quarterly intervals in accordance with generally accepted auditing standards;

- to maintain these books and records for a period of three years after the date of the transfer of the Grant from the Trust Account to the Fund;

- to provide the Donor with a full statement of the Trust Account before any transfer from it takes place;

- to afford the authorised representatives of the Donor the opportunity at all reasonable times to inspect and audit the Trust Account and books, records and other documents relating thereto.

If the evidence referred to above has not been furnished by 26 September 1986, the Donor, at its option, may terminate this Agreement by written notice to the two Governments.

ARTICLE 5

(Disbursement) On receipt of the evidence specified in Article 4, disbursement of the Grant by the Donor may be made to the Account through electronic funds transfer.

ARTICLE 6

(Transfer of the Account to the Fund) The Donor will issue documentation to the two Governments, indicating its approval, and the two Governments will instruct the Trustee Bank to transfer the Grant to the Fund only after:

(i) the two Governments have furnished to the Donor evidence of the legal establishment of the Fund as set out in Annex A and

(ii) the Fund, after its establishment, has furnished to the Donor evidence as to its administration and operation as set out in Annex B.

If the conditions specified in this Article have not been met by March 31 1987, or such later date as the Donor may agree to in writing, the Donor may require the two Governments to instruct the Trustee Bank to return the Grant, and any earned interest, in United States Dollars, to the Donor within thirty (30) days after receipt of a request therefor.

ARTICLE 7

(Grant Implementation Letters) After the establishment of the Fund, the Donor and the Fund may use Grant Implementation Letters which have been jointly agreed to confirm and record their mutual understanding on aspects of the implementation of this Agreement.

ARTICLE 8

(Communications) Any notice, request, document, or other communication under this Agreement will be sent through the diplomatic channel in the case of communications addressed to the two Governments; to the Joint Secretaries in the case of communications addressed to the Fund; and to the Agency for International Development in the case of documents addressed to the Donor.

ARTICLE 9

(Representatives) For the purpose of this Agreement, the two Governments will be represented by the individuals holding the office of Joint Chairman of the Advisory Committee to the Board of the Fund and the Donor will be represented by the individual holding or acting in the office of Deputy Assistant Administrator, Bureau for Asia and Near East, each of whom, by written notice, may designate additional representatives for all purposes other than amending this Agreement.

ARTICLE 10

This Agreement shall enter into force on signature.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

Done in triplicate* at Washington this ..th day of 1986

For the Government of Ireland:

.....

For the Government of the United Kingdom of Great Britain and Northern Ireland:

.....

For the United States of America:

.....

* The three copies will be identical, and will use alphabetical order and the terminology usual in multilateral international instruments.

ANNEX A

Evidence of the legal establishment of the Fund should be interpreted to include:

(a) Copies of the Agreement between the two Governments establishing the Fund;

(b) Certifications by competent legal authorities of each Government that the Agreement and any other legal action required by each Government, sufficient to establish the Fund as a legal entity with all necessary authorities, has been accomplished and that the Fund exists in fact;

(c) Documentation providing evidence of the organisation of the Fund, and its designated representatives authorised to act legally in its behalf.

ANNEX B

In order to confirm clearly before disbursement of the Grant that the Fund conforms to the purposes and objectives for which it has been established, it will supply:

(a) Documentation providing evidence of the objectives of the Fund, the priority development investments it intends to pursue, and preliminary programming estimates guiding the Fund on investments to be pursued by geographic region and sectors of activities.

(b) Documentation outlining the appraisal process including the criteria against which a project will be measured and any relevant engineering, financial, economic and social analysis necessary to assess its feasibility, value for money and economic and social impact.

(c) The names of the members of the Board and of the Joint Secretaries of the Fund.

(d) Documentation outlining the rôle and responsibilities of donors to the Fund.

(e) Documentation outlining the scope and nature of reporting to donors on the impact of Fund activities on meeting its objectives and the internal and external auditing procedures which the Fund intends to follow in managing its resources. It understood that financial records shall be maintained in accordance with generally accepted accounting practices. All such financial records shall be maintained for at least 3 years. It is further understood that the programmes of the Fund will be subject to independent audit by the Fund's outside certified or chartered public accountant and that the Fund will furnish copies of these audit reports to the Donor along with such other related information as may be requested by the Donor with respect to questions arising from the audit report.

IRELAND: Situation: Pt 21.

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cc PS

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

BF // Await Def. Sec's reply. ODP 15/9.

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon George Younger MP
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
LONDON
SW1A 2HR

15th September 1986

Dear Secretary of State,

ADDITIONAL ROYAL ENGINEER ASSISTANCE IN NORTHERN IRELAND

In my letter to you of 11 August concerning force levels in Northern Ireland I concluded by promising to write further in due course about the possibility of additional Royal Engineers assistance being provided for work on two major tasks:

(a) urgent, operationally essential building work at four RUC police stations at Rosslea, Plumbridge, Carrickmore and Rosemount; and

(b) the construction of a security fence at HMP Maze which, when completed, would allow the military component of the Prison Guard Force to be reduced to a level where it would no longer be necessary to provide a roulement squadron/battery from BAOR to form that Force.

However, before explaining our further needs for Royal Engineer assistance I must take this opportunity to put on record for you and the colleagues to whom I am copying this letter my profound gratitude for the efforts that the Sappers have so far made and are

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still making in support of the police. There can be no doubt that their flexibility, capacity for hard work and ingenuity in procuring materials in the face of the Provisional IRA threats is an inspiration and a very significant boost to the morale of every policeman in the Province.

Turning now to further RE support for the above items in the RUC building programme, you will no doubt be aware that the Provisional IRA have not only re-emphasised recently their threat to building contractors engaged in work for the security forces but also widened it to cover those supplying items such as food, fuel and transport facilities - and have backed it with two further murders to add to the previous three. Against the background of fear and tension brought about by this most vicious PIRA threat yet (and by counter-threats from Loyalist paramilitary groups) we are striving both to maintain the programme of rebuilding and improving protection at police stations by the use of local civilian contractors and establish viable alternatives to these local contractors. In endeavouring to ease the current problems of getting work done we have been pursuing a number of options. Local RUC stations have been given delegated authority to have small maintenance work carried out quietly. The Police Authority have been doing their utmost to ease the situation and have tried, so far without success, to stimulate local interest in a NI consortium taking on work; a similar idea, under PSA auspices, has made little progress in GB. I understand that the Police Authority are in touch with a Hong Kong firm who had earlier expressed an interest in taking on work. NIO officials are investigating similar radical options.

Royal Engineers it is estimated that it will require the deployment of two successive field squadrons for consecutive four months roulement tours. I believe this programme of work represents a necessary and essential use of RE resources whilst the direct PIRA threat remains and I seek your agreement that one additional roulement squadron be deployed to the Province at the beginning of February 1987 and another four months later. I might add that once some of the work requested has been completed it should reduce the number of soldiers required at Rosslea and reduce the commitment of helicopter flights into Carrickmore.

The task of building a security fence for HMP Maze, on the understanding that its construction secured the end of the military commitment to provide a roulement squadron/battery from BAOR for the Prison Guard Force, has been assessed as requiring Royal Engineer reinforcements of one field squadron with some additional specialists for six months after a minimum initial design and procurement stage of about six months. In terms of time and cost this option has significant advantages over the employment of civilian contractors to carry out the task which has been assessed as taking an overall time of three years (including the six months design stage) - always assuming that contractors could be found to tender for such a highly visible task.

I have authorised the design of the fence to proceed but I am afraid that I am not yet able to come to you with a firm request for Royal Engineers assistance, as agreement has not yet been reached on the

The fact remains that if, in the short to medium term, we are effectively to counter the IRA tactic of attacking exposed police stations and then preventing repairs by means of intimidation, the support of the Royal Engineers is crucial. Not only is it the sole means of securing urgent reconstruction work; it is also the most visible demonstration of the Government's will to meet PIRA's challenge head on and defeat it, and of the Government's commitment to the security and morale of the Royal Ulster Constabulary. Speaking to the Sappers on the ground I have been impressed to find how they appreciate the challenge and the importance of their task, and the satisfaction they derive from doing a vital, operational task in support of their colleagues in the RUC.

As I said in my previous letter, my request for additional Royal Engineer assistance is for those four stations mentioned above where the RUC must stand firm and where there is an urgent, operational need to provide blast and mortar-proof premises. In both political and security terms we simply cannot allow the RUC presence in those locations to be overthrown.

I understand that the lead time for preparing design plans and ordering supplies is such that it would not be possible for the work to be started by a squadron arriving at the beginning of November (when the present additional roulement squadron leaves), nor is there in any case likely to be a squadron available before 1 February 1987. Further I understand that if this work is taken on by the

precise size and composition of the residual Guard Force that will be needed once a fence has been built in order to maintain what we assess as the requisite level of security. We are trying to resolve this problem urgently. Meanwhile you may wish to leave sufficient flexibility in the Royal Engineers Arms Plot for 1987 to keep open the option of using Royal Engineers to build the security fence if, as I hope, the subsequent composition of the Prison Guard Force is agreed, in order that reinforcement from BAOR may cease to be necessary.

To summarise, I shall be most grateful if you will see your way to providing two additional roulement field squadrons to serve successively in the Province from 1 February 1987 in order to carry out operationally essential work on the four police stations named above. I consider this task to be so important to maintaining the Government's security policy here - in the face of both the terrorist threat and criticism from opponents of the Anglo-Irish Agreement - that I should be happy to discuss my request with the Prime Minister and colleagues if you thought that necessary. I shall write again on the security fence at HMP Maze if and when the outstanding issue has been resolved satisfactorily.

I have now seen your letter of 10 September on force levels. I

shall be replying separately on the main issue but think it important to press ahead with Engineer assistance now.

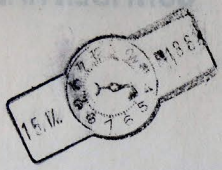
I am copying this letter to the Prime Minister, Geoffrey Howe and Douglas Hurd and to Sir Robert Armstrong.

Yours Sincerely
Norman
(Private Secretary)

for TK
(Approved by the Secretary of State and signed in his absence in Northern Ireland)

SP

IRELAND: Situation Pt 21.



PM/86/056

PRIME MINISTER

International Fund for Ireland

1. Tom King wrote to you on 8 September outlining the arrangements set in train for the signature of the Agreement with the Irish to set up the International Fund.

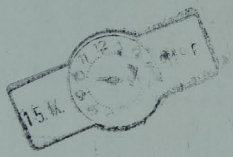
2. I can confirm that arrangements have been made for me to sign the London copies of the Agreement with the Irish Ambassador at 6pm on 18 September. The Irish Foreign Minister will be signing the Dublin copies with HM Charge d'Affaires earlier the same day.

3. I am copying this minute to the members of OD(I), the Chief Whip and Sir Robert Armstrong.

GEOFFREY HOWE

Foreign & Commonwealth Office
15 September 1986

IRELAND Situation PT21



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CCBG

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

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SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Viscount Whitelaw PC CH MC
Lord President of the Council
Whitehall
LONDON
SW1A 2AT

10th September 1986

Dear Lord President,

EQUALITY OF OPPORTUNITY IN EMPLOYMENT IN NORTHERN IRELAND

ATTACHED

At its meeting on 29 July H Committee agreed that I should issue a Consultative paper containing proposals for strengthening the arrangements for preventing discrimination in employment in Northern Ireland; although it also covers discrimination on grounds of sex or disability, the Paper is strongly focussed on the religious dimension.

Despite the establishment of the Fair Employment Agency in 1976 religious discrimination in employment continues to be a grave problem with the Catholic unemployment rate double that of Protestants. There is continuing political concern both at home and abroad and a particular problem in the United States where a disinvestment campaign has been mounted in several State legislatures and through shareholders resolutions.

The proposals in the Consultative paper are the outcome of a process launched by Douglas Hurd in July 1985 and their early publication is eagerly awaited, not least by our political and industrial allies in the United States. At the same time I am conscious of the sensitivity of the Northern Ireland proposals in relation to discrimination on grounds of race and sex in Great Britain. We have taken care to frame the consultative document in such a way that it does not cause problems to colleagues in Great Britain; and

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officials in the appropriate Departments have been helpful to mine in achieving agreement on this. It is now clearly essential that we collectively present the Northern Ireland proposals as both appropriate to Northern Ireland circumstances and as consistent with our approach to the wider problem of discrimination on various grounds.

I attach a short note of key points for colleagues to deploy if questioned about the proposals and also a summary of the Consultative paper's conclusions.

I am copying this letter to the Prime Minister and all Ministers in charge of Departments.

Yours Sincerely

N Dorrand

(Private Secretary)

for TK

(Approved by the Secretary of State and signed in his absence in Northern Ireland)

SP

ANNEX A

EQUAL OPPORTUNITY IN EMPLOYMENT IN NORTHERN IRELAND

The Problem

- Religious discrimination unique to Northern Ireland within UK.

- Successive Parliaments legislated against such discrimination.

- Unfortunately Catholic unemployment rate still double that of Protestants.

- Arrangements to deal with discrimination on religious grounds must be set in the context of other forms of discrimination and the small size of Northern Ireland.

Government Principles

- Equality of opportunity in employment must be promoted on the basis of merit through sustained practice of good personnel procedures.

- "Quotas" in employment are not an acceptable basis for effective progress.

The Key Proposals

- The current Fair Employment Agency's Declaration of Principle and Intent, signed by employers, will be changed to a Declaration of Practice.

- As at present, Government bodies in Northern Ireland will only accept tenders for Government contracts from employers making the new Declaration of Practice.

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- Increased emphasis on monitoring by employers of employment practices; and more effective independent supervision that this is being done.

- Financial assistance to employers to improve their personnel procedures.

- Taking powers to withhold Government grants from companies which discriminate on grounds of religion.

- Placing a statutory duty on the public sector to practice equality of opportunity in employment through standards which will equate with those in the Declaration of Practice.

Points to Emphasise

- Government in Northern Ireland has operated "tender acceptance" requirement in relation to religion for many years (to be distinguished from "contract compliance").

- Quotas, reverse, benign or positive discrimination all transfer disadvantage from one community to another. What Government seeks is "employment equity".

- Government acting on broad front to lift burdens from industry but accepts the need for effective measures on a matter of central importance to society in Northern Ireland.

- Objective is to help employers achieve fair employment practices. Use of the sanction of grant denial would obviously be a last resort.

Summary of Conclusions in Consultative Paper

The key proposals are aimed at bringing about better private and public sector practices through:

changing the current Declaration of Principle and Intent by employers to one of Practice, applying it (as at present) to religion only and accepting tenders for Government contracts only from those so certified;

increased emphasis on the effective monitoring of employment practices in the public and private sectors;

the provision of initial financial assistance to employers to improve their personnel procedures and to promote better practice;

taking powers to introduce the sanction of grant denial in the private sector in relation to religious discrimination;

placing a statutory duty on the public sector to practice equality of opportunity in employment on the basis of those procedures set out in the proposed Declaration of Practice.

Institutional Change

Alongside the key policy proposals, institutional changes are also proposed:

establishing a new Commission to deal with equality of opportunity in employment in both the public and private sectors;

incorporating in that Commission a separate Directorate (to exercise the educational, developmental and promotional role and the investigatory function) and a separate body of Commissioners (to exercise the quasi judicial role);

including provision for appeal to a new Independent Appeal Tribunal (modelled on the Planning Appeals Commission and replacing the Fair Employment Appeals Board);

establishing a supportive advisory unit in Government to give guidance on equality of opportunity in employment.

Options

With the above proposals as a central core there are institutional and legislative options.

Institutional

- A single dimensional Fair Employment Commission to deal with religion in both the public and private sectors; or

- a multi-dimensional Equal Employment Opportunities Commission to deal with religion, sex and disability in both the public and private sectors.

Legislative

Apart from the legislation which would be necessary to set up either the Fair Employment Commission or the Equal Employment Opportunities Commission and the other key measures, the remaining legislative options are:

to retain the existing differential approach to religion, sex and disability. This would involve retaining both the disabled "quota" and disabled and sex specific training; and retaining access to industrial tribunals in the case of sex discrimination in employment; or

to move towards a single corpus of law for religion, sex and disability.

SECRET

14

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 19/3E

10 September 1986

CDP 12/9.

Dear Tom,

FORCE LEVELS IN NORTHERN IRELAND

Many thanks for your further letter of 11th August about force levels. at Flap.

I should first of all make clear that it was not my intention in my earlier letter to question the detailed threat assessment which you provided. On the contrary, I believe that the threat assessment supports the view that, although PIRA activity continues to be high, the level of violence and of the threat have returned to very much the same level as they were in 1985 before the successful series of attacks at the turn of this year. In saying this, I am very conscious that something could happen tomorrow to change the picture significantly for the worse (as, regrettably, happened immediately after my last letter in the case of contractor intimidation). But this is an ever-present danger in Northern

The Rt Hon Tom King MP

Ireland. Similarly, there is, unfortunately, nothing novel about the type of incidents described in your third paragraph and supporting Annex, or about the fact that casualties could have been much worse if particular devices had not been defused.

In short, it does seem to me that the two battalions have largely achieved the objectives for which they were sent to the Province and, while there will always be some risk that the problems will increase if they are withdrawn, I am most reluctant to leave them in Northern Ireland without any specific target date for withdrawal because of the pressures this imposes on the Army as a whole. In my last letter I drew attention to the need to restore the level of our reserve, but the pressures on the soldiers themselves are at least as important. The average interval between unaccompanied tours for UKLF infantry battalions is now down to less than a year compared with a minimum target of two years and an actual level of 19 months a year ago. Each battalion withdrawn would raise this average by some 2½ months. At the same time I would not wish to see the 'nights out of bed ratio' again rise to unacceptable levels for the remaining troops as a result of any withdrawals. We must also do our utmost to get away from the planning problems caused by reviewing the future of the additional battalions every few months. Against this background, I believe we need to consider the underlying requirement for Army manpower in Northern Ireland.

Now that the threat has returned to about the same level as last year, our objective should also be to return to the same force level as soon as possible. But the Army in Northern Ireland is now having to provide a significantly higher level of support to the RUC than at the beginning of 1985, a trend which was beginning to develop even before the pre-Christmas PIRA attacks. As I have indicated previously, we believe that a number of the Army's current commitments - notably the close protection of such a large number of RUC stations - represent an inappropriate use of Army manpower. The essential first step is therefore the study you have initiated into the relationship between police and Army tasks which should identify the true police and Army force levels required. It may well be that one of the reasons why the Army has had to take on extra commitments is a shortage of police manpower, but if this is the case I believe that the underlying problem must be met by an expansion of the RUC rather than by an increase in Army force levels.

Until we know the results of the manpower study we cannot reach final decisions on the force level for next year but in my view the pressures on the Army are such that we must withdraw at least one battalion as soon as possible. I recognise that it takes time to recruit and train extra policemen, which is why I first drew attention to the possibility of a police manpower problem in my letter of 24th February. I would, if necessary, be prepared to leave the second additional battalion in place for the whole of

1987 but only to provide the time for police strength to be increased. It is essential that the study is completed as soon as possible so that we develop a clear view of police and Army manpower needs and can plan accordingly. To slip from one extension to another, is disruptive for the Army and can lead to an open-ended commitment.

The exact timing of the withdrawal of the first battalion is a matter of fine judgement. To be home by Christmas, which has obvious presentational attractions, it would need to begin its withdrawal by 15th December, but this would still mean that the existing force level could be maintained for a month after the anniversary of the Anglo-Irish agreement and until the point when in most previous years we have seen something of a lull in violence over the holiday period. If there is a lull, it might be the best point to disengage and it would also give us more of an opportunity to gauge the impact of withdrawing the first battalion before the onset of the next marching season and before reaching a final decision about the second battalion. On the other hand, there are some advantages in retaining the battalion until the end of its normal tour in January, principally to ease the burdens on the troops remaining in Northern Ireland over the Christmas period and as a precaution against an upsurge in terrorist attacks on last year's pattern. On balance, I have concluded that we should leave the battalion in place over Christmas, but not replace it at the end of its tour.

Finally, I have noted that you may still be seeking further Royal Engineer assistance. The position on intimidation has undoubtedly taken a turn for the worse since my last letter as a result of the murders of Messrs Kyle and Bell and the associated repetition and extension of PIRA threats although, so far, the Army's problems have been mainly related to the supply of materials. I have already said that because of the importance which we attach to reducing the military commitment to the Maze Prison Guard Force we would be prepared to consider whether it would be possible for the Royal Engineers to undertake the construction of the Maze perimeter fence if this was the only way in which the Army's commitment could be reduced quickly.
I was therefore very disappointed to hear that at the latest Security Coordination Meeting the Northern Ireland Office appeared to be going back on the indication in your letter of 18th July that you could accept a reduction to about platoon level following the conclusion of the Prison Guard Force Review that a number of tasks need not continue to be carried out by soldiers. More generally, we will, of course, always do what we can to help in extremis, but I must repeat my warning that RE resources are limited and already stretched world-wide and I hope, therefore, you will exhaust all other options first.

I should be grateful to know that you and colleagues are content to proceed with planning for the withdrawal of the two reinforcement battalions on the basis outlined above. I am

sending copies of this letter to the Prime Minister, Geoffrey Howe, Douglas Hurd and to Sir Robert Armstrong.

Yours ever,

George

George Younger

IRELAND Situation PT21.

CONFIDENTIAL FILE SRW

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary 9 September 1986

Dear Jim,

INTERNATIONAL FUND FOR IRELAND

The Northern Ireland Secretary minuted the Prime Minister on 8 September about the final text of the bilateral agreement with the Irish government on setting up the International Fund for Ireland and the trilateral agreement with the Irish government and the US enabling us to receive the first US contribution of $50million.

The Prime Minister is content for us to sign the two agreements on the basis set out in the Northern Ireland Secretary's minute.

I am copying this letter to the Private Secretaries to members of OD(I), to the Chief Whip and to Sir Robert Armstrong.

Yours ever,

(C. D. POWELL)

Jim Daniell, Esq.,
Northern Ireland Office.

CONFIDENTIAL

CONFIDENTIAL

SECRETARY OF STATE FOR NORTHERN IRELAND

(1)

CDP
DN

PRIME MINISTER

Prime Minister
You have already approved this in principle.
Content? CDP 9/9

INTERNATIONAL FUND FOR IRELAND

In my minute of 13 August at flap I promised to advise you on the finalised texts of both the bilateral agreement with the Irish on setting up the International Fund; and the trilateral agreement with the Irish and the US enabling us to receive the first US tranche of $50m. I attach the finalised text of the bilateral agreement. The trilateral agreement is not yet complete, and will not be complete for several days, because the US side changed their view on how the $50m should be held until it is finally disbursed to the Fund. (Instead of being held by the US Government it will now be held in trust by the UK and Republic Governmemts). Once a finalised text is available I will show it to colleagues; but it is a short and largely technical agreement which should not in itself raise any political difficulties.

2. The bilateral agreement will establish a Fund administered by an independent Board, of whom we will nominate three members and the Chairman; the Irish will nominate three members. The Board will decide - within the terms of the Agreement set out in Article 3 - how the fund is to spend its money. But the Government will have the right to offer advice on all projects. The Secretariat to the Board will be drawn from existing civil service resources. As I explained in my previous minute the Fund itself will have immunity

/...

from tax (but not its members) and have a legal personality. An Order-in-Council will be approved as soon as possible by the two Houses when Parliament returns. My officials will discuss with the Lord President's Office the exact timing. The two agreements will also need to be laid before the House.

3. I understand that Geoffrey Howe has provisionally agreed that he should sign the Agreement in London on 18 September and Mr Barry at the same time in Dublin. The trilateral agreement would be signed shortly after in Washington. While I do not want to exaggerate the effect that the US resources will have (Northern Ireland will receive around £25m), it is nevertheless a generous contribution of more than symbolic significance, and we shall present the fund as a positive step in Northern Ireland.

4. I would be grateful to know that you are content for us to proceed with signing.

5. I am copying this minute to the members of OD(I), the Chief Whip and Sir Robert Armstrong.

N Howard
(Private Secretary)
for TK
(Approved by the Secretary of State and signed in his absence in Northern Ireland)

8 September 1986

IRELAND: Situation PT21

E.R.

CONFIDENTIAL

INTERNATIONAL FUND FOR IRELAND

The Draft (Annex A) which was mentioned in Tom King's letter of 8 September to the Prime Minister was omitted. Please attach this draft to the letter concerned.

Tom King's Private Office opoligise for any inconvenience caused.

J BROOKS
Private Office (L)

9 September 1986

CONFIDENTIAL

5.9.86
Annex A

D R A F T

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF IRELAND* CONCERNING THE INTERNATIONAL FUND FOR IRELAND

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland:

Desiring to establish a Fund to contribute to the work envisaged in Article 10(a) of the Anglo-Irish Agreement of 15 November 1985, which provides as follows: "The two Governments shall co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and shall consider the possibility of securing international support for this work.";

Convinced that such a Fund would be an important expression of international support for the common commitment of the two Governments to peace, stability, dialogue and reconciliation in Ireland and their common opposition to the exploitation of instability for political ends;

Recognising that serious under-employment and multiple deprivation create an environment in which instability can flourish, and that instability and conflict in turn create conditions which are inimical to social and economic progress;

Recognising the damage caused to both parts of Ireland by that instability;

Have agreed as follows:

* The Agreement will be prepared in two variants; the names and order of reference to the two Governments in each variant will follow the precedent of the Anglo-Irish Agreement 1985.

ARTICLE 1

The International Fund for Ireland is hereby established by the two Governments for the purposes and in the manner set out in this Agreement.

ARTICLE 2

The objectives of the Fund are to promote economic and social advance and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland.

ARTICLE 3

In pursuance of these objectives, the Fund shall stimulate private investment and enterprise, supplement public programmes and encourage voluntary effort, including self-help schemes. In the voluntary sphere, special emphasis shall be placed on supporting economic and social projects sponsored by men and women of goodwill throughout Ireland who are engaged in the task of communal reconciliation. The need to maximise the economic and social benefits of the Fund in Ireland shall be an overriding consideration in making disbursements from its resources and these disbursements shall be consistent with the economic and social policies and priorities of the respective Governments. Because of the special problems in Northern Ireland associated with the instability of recent years, approximately three-quarters of the resources of the Fund shall be spent there.

ARTICLE 4

In accordance with the objectives and criteria set out above, the Fund shall give priority on a value for money basis to the following:

(a) the stimulation of private sector investment, in particular by means of venture capital arrangements using some of the resources of the Fund;

(b) projects of benefit to people in both parts of Ireland, for example, improved communications and greater co-operation in

the economic, educational and research fields;

(c) projects to improve the quality and conditions of life for people in areas facing serious economic and/or social problems. Spending will be carefully targetted to meet needs arising from factors such as high unemployment, under-developed social, health or education facilities, poor environment and sub-standard infrastructures;

(d) projects to provide wider horizons for people from both traditions in Ireland including opportunities for industrial training and work experience overseas.

ARTICLE 5

(1) The Fund is established as an international organisation of which the two Governments are members.

(2) The Fund shall have legal personality. Its legal capacity shall include the capacity to contract, to acquire and dispose of property and to institute legal proceedings. In particular it shall have power to enter into agreements with any donor consistent with the provisions of this Agreement provided that neither Government has indicated any objection. The Fund shall be exempt from the payment of direct taxes.

ARTICLE 6

The Fund shall have as its sole principal organ a Board which will consist of a Chairman and not less than six other members. The Chairman and other members of the Board shall be appointed jointly by the two Governments. They shall serve on terms and conditions decided by the two Governments. Donor countries if they so wish may send observers to participate in Board meetings. The decisions of the Board shall be taken by a majority. The Board shall, subject to the approval of the two Governments, establish rules of procedure and operating rules. Under these rules, a power of the Board may be delegated to one or more of its members. Subject to this Agreement, the members of the Board shall act independently and shall not

receive instructions from Governments as to the exercise of their powers.

ARTICLE 7

The Board shall consider applications for assistance from the resources of the Fund and, if the Board is satisfied that they fall within the purposes set out above, may authorise grants and loans to any authority or any person or association for the purposes set out in the foregoing Articles. The Fund shall also provide resources for the establishment of the two companies referred to in Article 9 below.

ARTICLE 8

The Fund may contribute to the resources of existing bodies specialising in the provision of venture capital to be used for purposes within Article 4 of this Agreement.

ARTICLE 9

The Fund shall also provide money for and initiate the establishment of two Investment Companies, one to be established in each part of Ireland, with a significant number of common directors and similar objectives, whose function will be to furnish venture capital for the private sector. Persons of established commercial experience especially in the international field shall be invited by the Board of the Fund to participate in the management of these Companies. Each of these Companies shall be concerned with ventures primarily in one of the two parts of Ireland and shall be registered there: but in appropriate cases, they may both support a venture or enterprise. The Companies shall identify the risk capital needs for ventures of existing or new industrial and commercial enterprises and will provide, on sound commercial criteria, equity capital or loans. The aim of the Companies shall be further to stimulate viable and self-sustaining growth in the private sector of the economies of both parts of Ireland.

ARTICLE 10

The Board shall be assisted by an Advisory Committee composed of representatives of the two Governments, in particular as regards all applications made to the Fund under Article 7. The accommodation and secretarial services necessary for the proper functioning of the Fund, together with its general administrative and organisational expenses, shall be provided jointly by the two Governments.

ARTICLE 11

The Board shall appoint auditors who will annually audit the accounts of the Fund. The report of the auditors shall be published.

ARTICLE 12

The Board shall present annually a report to the two Governments and to donors to the Fund.

ARTICLE 13

This Agreement may be amended by a further Agreement between the two Governments.

ARTICLE 14

This Agreement shall enter into force on the date on which the two Governments exchange notifications of their acceptance of it except that Article 5(2) shall become effective only after the completion of any remaining steps necessary in that connection. The Agreement shall continue in force until terminated by mutual agreement or by one government giving the other six months' written notice, and thereafter shall remain in force for as long as and to the extent necessary for an orderly disposal of any remaining assets of the Fund in accordance with the spirit of the Agreement in full consultation with the donors.

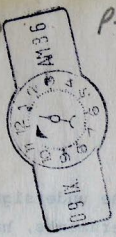
In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at ..... and ..... on the ... day of ..... 1986.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

For the Government of the Republic of Ireland:

Situation: IRELAND Pt 21.



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From: THE PRIVATE SECRETARY

13

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

CDI
2/9.

Mark Addison Esq
Private Secretary
10 Downing Street
LONDON SW1

1st September 1986

Dear Mark,

CONTINGENCY PLANNING FOR NORTHERN IRELAND

Tim Flesher wrote to Jim Daniell on 19 August about contingency planning for Northern Ireland.

I can confirm that work is continuing on the basis set out my letter to Charles Powell of 31 July, and that the Secretary of State will wish to inform the Prime Minister of its outcome. In the light of that, we shall of course consider the likely impact on the overall endurance of the MACM plans insofar as this can be assessed in the different circumstances.

I am copying this letter to the Private Secretaries to the other members of OD(I), Geoff Dart (Department of Energy) and Michael Stark (Cabinet Office).

Yours Sincerely
Neil Ward

N D WARD

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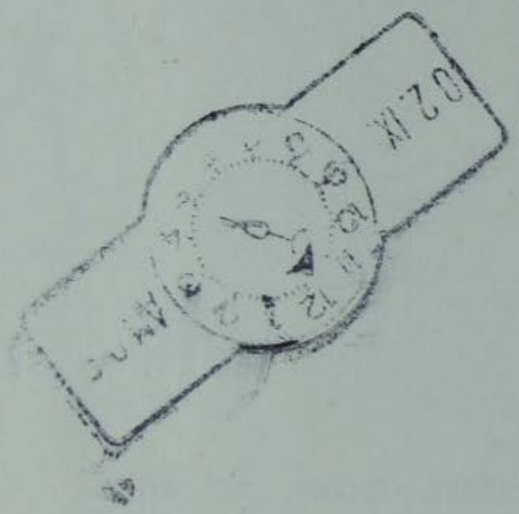
IRELAND : Situation . Pt 21.



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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

19 August 1986

The Prime Minister has seen your Secretary of State's minute of 11 August about force levels in Northern Ireland. She has noted that the issues involved remain under consideration but has commented that the same arguments would be used even if there were four additional battalions rather than two. In the Prime Minister's view too many soldiers on the ground often means too many targets for the terrorists.

I am sending copying this letter to Colin Budd (Foreign and Commonwealth Office), Stephen Boys Smith (Home Office), John Howe (Ministry of Defence) and Michael Stark (Cabinet Office).

(Timothy Flesher)

Jim Daniell, Esq.,
Northern Ireland Office.

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c. LPO
FCO
HO
MOD
LPSO
CDL
(NIO)
CST, HMT
LOD,
CWO
+ below

10 DOWNING STREET

From the Private Secretary

19 August 1986

Contingency Planning for Northern Ireland

The Prime Minister was glad to learn, from your letter of 31 July, that your Secretary of State had agreed to further consultations on a number of your contingency plans. She understands that the planners will be getting on with the necessary work as quickly as possible and she would be grateful to be informed in due course of the outcome of this work. The Prime Minister has noted the other points in your letter - particularly that there is no disagreement between your Secretary of State and the Secretary of State for Defence on the factors likely to determine the overall endurance of the plans. She believes it would be helpful to carry out a fresh assessment of likely overall endurance once the additional work now being undertaken is completed.

This letter is copied to the Private Secretaries to the other members of OD(I), Geoff Dart (Department of Energy) and Michael Stark (Cabinet Office).

(TIM FLESHER)

J.A. Daniell, Esq.,
Northern Ireland Office.

SECRET

cc LPSO HD LPO LSOA FCO MOD CSL CTO CMOO CO

FILE

DA

cc PS

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

18 August 1986

The Prime Minister has seen your Secretary of State's minute of 13 August about arrangements for an International Fund for Ireland. She has agreed that we should proceed as suggested in that minute and has noted the arrangements necessary to bring it into effect.

I am sending a copy of this letter to Private Secretaries to members of OD(I), Murdo Maclean (Chief Whip's Office) and Michael Stark (Cabinet Office).

(Timothy Flesher)

Jim Daniell, Esq.,
Northern Ireland Office.

GA

SECRET

10

Mr FLESHER

cc Mr Mallaby o/r
Mr Unwin o/r

Contingency Planning for Northern Ireland

1. We have spoken on the telephone about the letter of 31 July from PS/Secretary of State for Northern Ireland to Mr Powell. There is now scope for improving a number of the contingency plans - particularly the one for maintaining an adequate level of electricity supplies, on which success of the others largely depends. MOD planners believe about three weeks will be needed for this work - assuming no problems arise because the 'right' people are away on leave.

2. In these circumstances I recommend you should send a holding reply to Northern Ireland - on the basis of the attached draft. We will provide further advice as soon as the necessary information is available.

Brigadier J A J BUDD

18 August 1986

SECRET

VC (95)

Draft

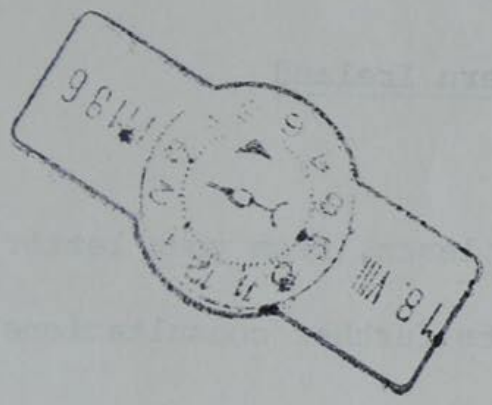
PS Prime Minister to PS Secretary of State for Northern Ireland

Contingency Planning for Northern Ireland

The Prime Minister was glad to learn, from your letter of 31 July, that your Secretary of State had agreed to further consultations on a number of your contingency plans. She understands that the planners will be getting on with the necessary work as quickly as possible and she would be grateful to be informed in due course of the outcome of this work. The Prime Minister has noted the other points in your letter - particularly that there is no disagreement between your Secretary of State and the Secretary of State for Defence on the factors likely to determine the overal endurance of the plans. She believes it would be helpful to carry out a fresh assessment of likely overall endurance once the additonal work now being undertaken is completed.

This letter is copied to the Private Secretaries to the other members of OD(I), Geoff Dart (Department of Energy) and to Michael Stark (Cabinet Office).

IRELAND: Situation Pt. 21



Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

15 August 1986

Dear Prime Minister

INTERNATIONAL FUND FOR IRELAND

I am content with the course proposed by the Northern Ireland Secretary for the establishment of the International Fund for Ireland as set out in his minute of 13 August. attached

I am copying this minute to the other members of OD(I), the Chief Whip and Sir Robert Armstrong.

Yours ever,

Janet Young

Baroness Young

The Rt Hon Margaret Thatcher MP
10 Downing Street

CONFIDENTIAL

Ref. A086/2372

MR POWELL

International Fund for Ireland

The Secretary of State for Northern Ireland has sent me a copy of his minute of 13 August about arrangements for establishing the International Fund for Ireland as an international organisation established by a formal Agreement between the two Governments.

2. Given the objectives, I think that the Prime Minister can accept that this method is the best method of setting up the Fund. The decision to establish the fund is of course agreed policy, enshrined in the Anglo-Irish Agreement of 15 November 1985. We had given consideration to establishing it as in effect a charitable trust under British law; that would have been possible without the need for an Order in Council. But, as the Secretary of State's minute makes clear, there are practical advantages in setting it up as an international organisation established by a formal Agreement between the two Governments. If there are objections from Members of Parliament, they could no doubt be hardly less easily voiced if the Fund was set up in other ways than if it is set up in this way, and I think that the balance of advantage lies with going ahead as the Secretary of State proposes.

Christopher Clowes

p.p. ROBERT ARMSTRONG

14 August 1986

CONFIDENTIAL

D10

CC PK 1

Prime Minister:
I understand that the NIO envisage a Board with a Northern Ireland chairman. Sir Robert Armstrong's views are attached (he supports Mr King). Agree to proceed this way?

Prime Minister

Yes

INTERNATIONAL FUND FOR IRELAND

The US Congress have voted $50m for the International Fund for Ireland in the current (1986) US fiscal year, and is likely to provide $35m in both 1987 and 1988. Northern Ireland's share will be some $90m over three years. The Australians, Canadians and New Zealanders will also contribute and there is a possibility of contributions from some European countries. We must now proceed to establish the Fund to receive the money.

14/Y

2. The Americans and the Irish believe that the Fund would be best established as an international organisation established by a formal Agreement between the two Governments, and I accept this. The Fund would thereby have a legal personality enabling it to spend, hold and receive money and to enter into contracts. The Fund is government-provided money which would normally be untaxed; and the donors would object to our levying tax on their contributions. But we do not intend to seek any other immunities, which would be both controversial and unnecessary. In practical terms such a body would be much easier to operate than any less formal body which would not have these powers. The Fund would largely draw on existing civil service resources, and would be cheap to run.

3. The disadvantages of a formal agreement are presentational and procedural. We would need to seek the approval of both Houses for an Order in Council giving the Fund a legal personality and immunity from tax. The Order may occasion hostile comment, perhaps from a few of our own supporters and certainly from the Unionists, if they are back. But this hostility will be expressed however the Fund is

established and on balance I consider that such an Order is a reasonable price to pay for a satisfactory Fund.

4. The Agreement must be signed before 30 September (end of the US fiscal year) to provide a legal basis to enable the first tranche of US funds ($50m) to be "obligated" (ie "committed"). If this is not done the money will lapse. We therefore envisage signature in about the second week of September. Although the Agreement could not come into force until the Parliamentary procedures had been undertaken in Westminster and Dublin in the Autumn, its signature would be a sufficient legal basis for the obligation of the money. Once it was signed we would also sign a tripartite agreement with the US and the Irish and any others expressing our intention to proceed with the Fund. This would also need to be laid before Parliament, but would not require a debate.

5. I will of course advise you as soon as we have a finalised text of both Agreements.

6. I am copying this minute to the members of OD(I), the Chief Whip and Sir Robert Armstrong.

N Howard
(Private Secretary)
for TK
(approved by the Secretary of State and signed in his absence)

13th August 1986

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295 29

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

11th August 1986

Rt Hon George Younger MP
Secretary of State for Defence
Main Building
Whitehall
London SW1

Dear Secretary of State,

FORCE LEVELS IN NORTHERN IRELAND

Thank you for your letter of 28 July. I have also seen the letter from the Prime Minister's Private Secretary of 29 July. I cannot for the moment resolve all the points at issue, but I think I should give you and our colleagues my immediate reactions and, in particular, warn you that I think it may be over optimistic to plan on the early withdrawal of the two additional roulement battalions.

The threat assessment which I sent you with my earlier letter had the full support of all my professional advisers who live with the problems on the ground - including the GOC as well as the Chief Constable and my Director and Coordinator of Intelligence - and it should not be lightly discounted. The additional roulement battalions have done a fine job; but insofar as the objectives for which they were sent here have been "largely achieved" this is because of the intensive efforts of those battalions and the other security forces. The problems are being contained: but they have not been eliminated. The fact is that we are faced with a very high level of PIRA activity, linked with the Anglo-Irish Agreement and concentrated particularly in the border areas. To deal with this we need a long-haul strategy. The benefits in cross-border security cooperation we are seeking through the Anglo-Irish Agreement have had no appreciable impact so far, nor is it realistic to suppose that they will do so for some time to come. Meanwhile, a high level of military support for the RUC is essential.

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During the past 2 weeks we have had three policemen murdered at midday in the town centre of Newry (which has led to the reintroduction of military patrols in the town); a part-time UDR man has been killed in the Protestant area of Belfast; a British soldier has been shot and wounded at a permanent vehicle checkpoint near the border at Londonderry; and another civilian contractor has been shot dead. I would suggest that these incidents demonstrate that no-one here is crying wolf. As we always emphasise to visitors to Northern Ireland, crude security statistics are a misleading indicator of the situation (although in fact the casualty figures are slightly higher than they were this time last year). In recent months, they have not fully reflected the degree of effort and sophisticated expertise which the terrorists have been putting into their campaign. The proportion of attacks on security forces personnel which are successful is worryingly high; but what is even more significant is the frequency with which serious attacks are being thwarted by good work on the part of the security forces, or even at times by sheer good fortune. I attach a short annex listing some of these instances in the last few months: if even a few of these explosive devices had not been found and defused in time the casualty figures would look very different.

Further more, the level of terrorist activity as such cannot sensibly be looked at in isolation, but has to be seen in combination with the marked increase in public order problems which has followed the signature of the Anglo-Irish Agreement. Of course these are primarily a matter for the police; but they contribute directly to the overall strain on the security forces which is my central concern.

As I indicated earlier, I have put urgent work in hand, in consultation with the RUC and HQNI, on a study of the interaction between police and army manpower and tasks. I shall be in touch with you again as soon as we have the results of this; and I shall be extremely interested to learn the CGS's impressions after his forthcoming visit to Northern Ireland on this and on the general situation. But even if the study were to show that some tasks now being performed by soldiers could be undertaken by police it would take time to recruit and train the necessary policemen.

I fully appreciate your concern about open-ended commitments. It is in my interest as much as yours to work towards a situation in which military force levels can be reduced; but that cannot be done at the expense of safety. I fear that Northern Ireland is itself an open-ended commitment. We must hope that when the marching season is over and the anniversary of the Anglo-Irish Agreement is past there will be some relaxation of the current pressures on the public order front; but at present I see no reason to suppose that there will be an early reduction in the PIRA campaign of violence. In these circumstances I am bound to say that I believe it would be unwise to assume that both the additional roulement battalions can be safely withdrawn in the timescale you indicate.

At this stage I have no further comment of substance to make on the Prison Guard Force at HMP Maze. A feasibility study on the security fence is in progress and we have made arrangements for the senior

SECRET

Royal Engineer officer in the Province to see for himself what would be involved. I shall be in touch as soon as we have some hard information to inform our decisions.

As to the elements of the police building programme, your remark that "only three contractors" had been murdered this year has unfortunately already been overtaken by events and, in any case, overlooks the very wide impact that even a single killing can have in intimidating both contractors and their workforce. It is a tribute to the people of the Province that PIRA have had to mount such a sustained campaign of murder to discourage any drift back to work; but recent publicity will have shown you how effective the terrorist campaign can be, and the latest PIRA death threat has made a still further impact. Over the next five years the police building programme calls for 16 major new projects, at a cost of over £41M, as well as replacing temporary and unprotected buildings at over 100 sites. My request for RE assistance on four of these sites where the operational need is most pressing should be seen against the scale of the problems we face. I am, however, giving further thought to the difficulties and will be writing separately about this.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Douglas Hurd and Sir Robert Armstrong.

Yours Sincerely
Norman
(Private Secretary)
for TK
(Approved by the Secretary of State and signed in his absence in Northern Ireland)

LIST OF SIGNIFICANT INCIDENTS SINCE 1 MAY IN WHICH MEMBERS OF THE SECURITY FORCES NARROWLY ESCAPED DEATH OR SERIOUS INJURY

2 May	A proxy car bomb comprising 150 lbs of home-made explosives (HME) left outside the permanent vehicle checkpoint in CLADY, Co Tyrone exploded causing extensive damage to the checkpoint and surrounding buildings. There were no casualties.
28 May	Three mortar rounds were fired at a military observation post (OP) at Drummuckavall near CROSSMAGLEN in South Armagh. All three landed accurately on the target but fortunately none exploded. They were dealt with by an ATO.
31 May	Two off-duty soldiers had a narrow escape after attending a discotheque when a small bomb attached to the underside of their car exploded as one of them drove the vehicle away from his parking place in Mark Street, PORTRUSH. The rear of the car was extensively damaged but the soldiers escaped injury.
17 June	During the clearance operation mounted by the security forces following the discovery of the body of a man on 16 June on the border at Mullaghduff Bridge near CULLYHANNA in South Armagh a booby trap bomb comprising an estimated 150 lb of HME was located. It was neutralised by an ATO.
19 June	The RUC received a report of a suspicious device behind a wall of the golf club at Mound Road roundabout, Narrow Water near WARRENPOINT in Co Down. On investigation a remotely/radio controlled improvised explosive device (RCIED) was discovered. It comprised approximately 1000 lbs of HME. After a cautious clearance operation it was neutralised by an ATO on 22 June.
4 July	An ATO neutralised a command wire improvised explosive device (CWIED) comprising 5 beer kegs containing a total of almost 450 lbs of HME which had been placed in a manhole on the DUNGANNON/COALISLAND road in Co Tyrone. The device had been discovered on 3 July by British Telecom engineers working in the area.
5 July	A UDR foot patrol discovered a command wire leading to a hijacked VW van which had been left on the COOKSTOWN/POMEROY road in Co Tyrone. The area was cordoned and an ATO

tasked who dealt with a CWIED of 450 lbs of HME contained in the van.

10 July — An ATO neutralised a booby trap bomb attached to the underside of a car at the junction of Fountain Street/Cunningham Way in ANTRIM. It had been discovered by the owner of the vehicle - a full time member of the RUC (Reserve).

12 July — A number of men kidnapped a member of the TA as he was walking along the Crumlin Road in NORTH BELFAST. He was taken to an address in the Ardoyne area of Belfast where his captors then discovered his connection with the Army. He was interrogated about his involvement with the security forces and severely beaten. Acting on information received the police surrounded the house in which he was held, entered the premises and freed him. Three people were arrested in a nearby property in connection with this incident. All were charged with kidnapping and other related offences.

16 July — A 4-man Army foot patrol approached a car parked near DRUMMUCKAVALL OP in South Armagh. As they did so they noticed wires protruding from it and the car then exploded. Two soldiers were not seriously injured. A man was seen running away and several shots were fired at him but no hits were reported.

18 July — A part-time members of 6 UDR miraculously escaped with just minor injuries after a bomb detonated under his van as he was driving along a road near CASTLEDERG in Co Tyrone.

19 July — The INLA planted a small bomb in the Crown Bar, North Street, NEWRY. This bar is known to be frequented by members of the security forces. The owner of the premises discovered the device and threw it out into the street. The ATO was tasked and dealt with it.

21 July — As a result of a carefully planned operation, lasting several weeks, against terrorist activity, in the Andersontown area of WEST BELFAST the security forces searched premises at 10A Dunmisk Park. They found almost 300 lbs of HME and a variety of other bomb making components in the garage. These included two sawn-down CO_2 gas cylinders believed to be intended for use as anti-personnel devices against the security forces. Seven people were arrested in connection

with this find. Five of them were subsequently charged with explosives offences.

25 July — A 200 lb HME proxy van bomb parked outside RUC DUNGIVEN in Co Londonderry was neutralised by an ATO.

26 July — An ATO dealt with a 220 lb HME proxy car bomb stopped at the entrance gate to Port George Security Force Base in LONDONDERRY.

SECRET

From: THE PRIVATE SECRETARY

8 CCDC

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Cabinet Office will comment in due course. CDP 11/8.

31st July 1986

Charles Powell Esq
10 Downing Street
LONDON SW1

Dear Charles,

CONTINGENCY PLANNING

Thank you for your letter of ~~11~~ at-tiap July, in which you sought some further information for the Prime Minister on contingency planning. The Secretary of State hopes that Mr Younger will accept this reply as addressing the similar points which he made in his minute of 4 July.

We have looked carefully at the concerns expressed over the MACM plan for electricity supply. As the Secretary of State pointed out in earlier correspondence, he did discuss external assistance with the Chairman and Chief Executive of the Northern Ireland Electricity Service (NIES) in the aftermath of the Day of Action. Their assessment which remains current, was that their essential managers and engineering staff were likely to stay at their posts, and that they would be able from their own resources to maintain an output of at least that envisaged under the MACM plan for an indefinite period. The introduction of external assistance could well prejudice this. Nevertheless, the Secretary of State fully appreciates the vital nature of electricity supply, and the availability of MACM assistance as a last resort, and we have had a further exchange with the Chairman of NIES. He is certain that the suggestion made (at planning level) that the army should seek further information from the consultants in Great Britain who advise NIES on their plant would not be appropriate, since he could not guarantee that the approach would not feed back to his Service at middle management level, to our very considerable detriment. The Secretary of State therefore endorses the Chairman's advice that the planners should make the approach directly to the Chairman (although we will be most willing to facilitate this), and he will ensure that they obtain, in complete secrecy, all the information they require.

SECRET

As far as water and sewage services are concerned, consultation outside Government is not involved since these services are the responsibility of DOE (NI). We should therefore be able to answer any questions, and are already in process of providing further information on the availability of water supply to industries having a continuing process, and the extent to which generating stations are reliant on the public water supplies. As to liquid petroleum gas (LPG) a relatively small number of essential users require bulk supplies. In an emergency situation, deliveries would only be required at fairly long intervals, but the Secretary of State appreciates that there is a lack of trained army personnel to discharge this small part of the petroleum/oil plan. In such circumstances, he agrees that consultation/training should take place, but would much prefer it to take place in Great Britain.

You raised the question of our endurance if all MACM plans were implemented simultaneously. The period of 3 weeks and the term "operator fatigue" were derived from military sources, since they alone can estimate how long a particular military effort can be maintained. Clearly this shorthand form has been subject to misinterpretation. The true meaning seems to be that the MACM plans operated in their entirety can be expected to cope for at least 3 weeks in broadly their present form; thereafter we shall be moving into a new scenario with too many variables to allow for accurate prediction or meaningful planning. Some examples are

a. the public order situation at the time;

b. the success or otherwise of campaigns of intimidation;

c. the degree of co-operation from the civilian workforce, particularly senior middle management;

d. the possible need for some further reinforcements, depending for example on the factors at a. b. and c. above;

e. MOD's capability to supply this, to maintain and support their forces logistically, and their position if other simultaneous demands for other purposes are placed upon them.

The difficulty therefore lies, in the particular circumstances of Northern Ireland and against a possibility of widespread disruption whose effect cannot be predicted, in estimating what the military requirement would be, and the minute from the Secretary of State for Defence shows clearly that a precise and reliable estimate for these circumstances is probably unattainable. There is however no doubt that the MACM plan endurance could and would go well beyond the

3-week period, but that the initial period of the disruption and our success in coping with it would be crucial. The Secretary of State is very clear that there is no disagreement between him and Mr Younger on this.

Work is continuing on the distribution of essential supplies to end users, and we shall let CCU know of the outcome. This is an area where a precise plan would require detailed local consultation, and in present circumstances the gains would be enormously outweighed by the disadvantages. The Secretary of State is generally satisfied with our arrangements for co-ordination. Planning is co-ordinated through the Emergency Planning Branch of this Department, and the NI Emergency Committee would take the lead in co-ordinating action. The Committee is a very flexible structure which can operate at different levels, either Ministerial - or official-led, depending on the problem to be addressed. All NI Departments and the security forces are represented, although the Committee's constitution on any action would similarly depend on the problem. As soon as we have any warning of possible disruption, the Committee would meet as often as required, and at least daily.

The police already have plans to keep key routes open. It is understandable that those not familiar with the position in the province may have been confused by the events of the Day of Action, where police action was designed to keep as many routes open as possible while keeping the overall temperature down so that the 24-hour stoppage did not develop into something longer. Tactics would be quite different for planned longer term disruption, where firm priorities would have to be applied, and the security forces would set out to take and hold the initiative in the early stages.

Our basic objective would of course be the same as far as the media are concerned.

In the event of an emergency arising we will at once establish a 24 hour service to the media, the objective being to ensure that the Government's view is fed to the television and radio outlets from 5.00am; the Secretary of State and Ministers will be available to be interviewed at any time and at any frequency throughout the day; and briefings and interviews will be given to the writing Press in time for evening deadlines both for national and local newspapers.

In order to overcome the problem of Ministers going to broadcasting studios we are in the final stages of setting up, in co-operation with the BBC, a studio in Stormont Castle which can be used for either television or radio broadcasts. There will be a remote

control camera for television and a direct radio link. In addition, the BBC will install at Stormont Castle an outside broadcast unit which can be beamed directly to the Divis transmitter so that even in the extreme case of a takeover or widespread strike within the BBC we will still have capacity to broadcast nationally.

The Director of Information Services in the Northern Ireland Office and his senior staff will co-ordinate all departmental publicity, will co-ordinate the information work of the security forces and will be responsible for ensuring that publicity from other public service bodies (eg the Electricity Service) will conform with Government policy.

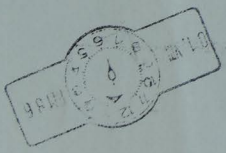
Finally, the Secretary of State has asked me to make one or two general points. The circumstances of the province, and the conditions for which we are planning have no parallel elsewhere in the UK. As a result, there are far more variables and the experience of 1974 and 1977 has taught us that the situation develops and plans have to be modified in ways that cannot be precisely forecast in advance. The essence to our approach to planning here is therefore flexibility so that changes can be made as matters develop. Finally, the worst case scenario that we are considering is unlikely at present. We do not face an imminent crisis, but could easily provoke trouble if our contingency planning became too visible; that could be taken as a sign either that the Government was running scared or that it was planning itself to seek confrontation, neither of which would be helpful.

I am copying this letter to the Private Secretaries to the other members of OD(I), Geoff Dart (Department of Energy) and to Michael Stark (Cabinet Office).

Yours Sincerely
Neil Ward.

N D WARD
Private Secretary

IRELAND Situation P121



SECRET

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aPC 7

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

29 July 1986

FORCE LEVELS IN NORTHERN IRELAND

The Prime Minister has seen the Northern Ireland Secretary's letter of 18 July to the Defence Secretary and the Defence Secretary's reply of 28 July about future force levels in Northern Ireland.

The Prime Minister hopes that the matter of how long to keep the two reinforcement battalions in Northern Ireland can be settled in discussion between the Northern Ireland Secretary and the Defence Secretary. She herself tends to the view that if their service in Northern Ireland is extended for too long, it will look like becoming an open-ended commitment.

I am copying this letter to the Private Secretaries to the Defence Secretary, the Foreign and Commonwealth Secretary, the Home Secretary and Sir Robert Armstrong.

(C. D. POWELL)

Jim Daniell, Esq.,
Northern Ireland Office.

SECRET

SECRET

6

PRIME MINISTER

FORCE LEVELS IN NORTHERN IRELAND

You will want to be aware of the attached exchange between the Northern Ireland Secretary and the Defence Secretary.

Tom King puts in a plea for extending the two reinforcement battalions currently in Northern Ireland. His main argument is that the level of IRA activity remains high, as does the threat to public order from Loyalist opposition to the Anglo-Irish Agreement. The Defence Secretary contends that the overall security position is not significantly worse than a year ago, indeed the number of attacks on the security forces is down, and the level of serious trouble from the Unionists has fallen short of our worst fears. He is prepared to maintain the present forces level until we have got past the anniversary of the Anglo-Irish Agreement in October. But he wants to withdraw the first additional battalion in early December and the second in February 1987.

I do not think that you need intervene at this stage, although the Northern Ireland Secretary is likely to seek your support for extending the additional battalions in due course. Personally I have some sympathy with the Defence Secretary's argument. There is an understandable tendency to over-insure in Northern Ireland and to award it too high a share of resources generally. A decision to reduce forces levels in some months time could also be useful politically as a sign that the Anglo-Irish Agreement is slowly becoming accepted.

We can safely let the correspondence run another round, unless there are any particular views you wish me to put in at this stage.

CDP

CHARLES POWELL
28 July 1986
CJ2ACJ

If the record is extended it does look like becoming an open-ended commitment. I therefore SECRET (together with MOD). mt

SECRET

5

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218

MO 19/3V

28 July 1986

Dear Secretary of State,

FORCE LEVELS IN NORTHERN IRELAND

Many thanks for your letter of 18th July about a number of aspects of military force levels in Northern Ireland.

Overall Force Level

Let me say at the outset that I fully appreciate the pressures under which the RUC have been operating and that the Army will continue to stand ready to provide any support that they need. Nevertheless, as I indicated when we decided to send the second reinforcement battalion, I am very anxious to avoid being drawn into an open-ended commitment and there seems to be considerable risk that this is now beginning to happen.

The Rt Hon Tom King MP

The first reinforcement battalion was sent to meet the increased operational commitments caused by the effects of the intensification of the PIRA campaign just before Christmas and, in particular, of a series of spectacularly successful attacks on police stations. The second battalion was intended to provide additional relief in the face of the need for the Army to provide continuing close protection for a very large number of RUC stations throughout the Province and to restore a margin of reserve for the "marching season".

These objectives have largely been achieved. We are past the peak of the marching season although we have still to face the first anniversary of the Hillborough agreement. What we have to ask ourselves now is whether there is any underlying reason for maintaining a force level which is 25% higher than last year. Frankly, our conclusion is that the overall security position now is not significantly worse than a year ago and we should therefore make arrangements to withdraw the additional battalions as soon as possible; bearing in mind that we retain the ability to provide reinforcements very rapidly should the need arise.

The Security Outlook

Although PIRA has been active throughout the year, their level of operations has not been significantly different from

last. After their attacks on RUC stations at the turn of the year there has been something of a lull in their attacks on Security Force bases. There has been only one major attack in recent months (Cloughmills) and the last mortar attack on an SF base (Kilkeel) was in May. Although INLA remain a latent and unpredictable threat, and may have partially recovered from recent problems, the threat from this quarter is no worse now than at several periods in recent years. Overall there have been 85 attacks on the SF since the beginning of the year, compared with 103 in the same period in 1985. There is no room for complacency and the picture can change quickly if the terrorists have a spectacular success but, as the detailed threat assessment attached to your minute indicates, there is no reason to foresee a fundamental change in the threat from either PIRA or INLA for some time to come. Equally, while serious trouble from the Unionists remains a possibility, the RUC have coped admirably with this year's marches and, apart from the forthcoming anniversary of the Anglo-Irish Agreement, there appears to be no reason to fear major disorder in the immediate future.

Against this background, I believe that we must take positive steps to reduce the level of military support to the police now that the end of the marching season reduces the immediate pressures on the RUC. While some police stations will clearly continue to rely on military protection for some time at

least, we cannot continue indefinitely to provide a military presence at 116 out of 159 stations in the Province. As I pointed out in February, this is a wasteful and restrictive use of military manpower and in many areas the task could be carried out by the RUC. I understand your reluctance to expand the RUC, but if there is a long term need for extra manpower - as your letter implies - this must be the correct way to supply it. It is certainly not cost-effective to use the Army as an alternative, quite apart from the effect that it has on the Army's ability to fulfil its other commitments.

I accept that it would be prudent to maintain the present force level until we have safely negotiated the anniversary of the Anglo-Irish agreement. But I consider that we must act now to restore our reserve (11 out of the Army's total of 40 infantry battalions are now committed to emergency tours) and that we should therefore set a firm timetable for withdrawing the two battalions during what is normally the relatively quiet winter period.

I agree therefore that both the current reinforcement battalions should be replaced at the end of their four month tours. But I would like to withdraw the first at the beginning of December so that the soldiers can be home for Christmas and not to replace the other when its tour ends in February 1987. I

hope you will agree that, given the security outlook, it would be sensible to plan accordingly.

Prison Guard Force (PGF)

I am grateful for the consideration that you have given to reducing the Army's commitments to the PGF. Although this is not the biggest problem so far as static commitments are concerned, it does impose a particularly awkward burden on BAOR. I note that you continue to see deterrent value in the presence of armed guards and I would not wish to dispute that judgement. Nevertheless, I do not see that this sort of static commitment need be undertaken by the Army; it would be more appropriate for it to be done by the RUC who are, of course, armed.

The construction of a new perimeter fence will, I am sure, play a key role in allowing a reduction in the military commitment. I hope, therefore, that you will be able to find a Northern Ireland contractor, or failing that, one from Great Britain to undertake this as soon possible. If this does not prove possible, I would be prepared to consider whether the Army might undertake this task, despite the very severe strain on RE resources, if it would enable us to reduce the PGF commitment quickly. But it would depend on exactly what would be involved.

Other Royal Engineer Assistance

I note that you intend to write to me again with further details of the Royal Engineer assistance which you are seeking. But I think I should make it clear now that I will find this very difficult as these resources are strictly limited and already severely stretched worldwide. I am glad that we have been able to meet the immediate crisis caused by the series of destructive attacks on RUC stations and we remain ready to provide extra assistance if similar emergencies arise.

Only three contractors have been murdered this year (north and south of the border) and the Army had noticed a marked improvement in the position by the beginning of June with all its outstanding contracts being let or re-tendered. The murder of Mr McKeever on 16th June caused a minor setback, although even this was not as significant as might have been expected. Nevertheless, if you consider that there is likely to be a continuing problem within Northern Ireland, I fully understand your need to find an alternative way of maintaining the police building programme. But I do not think it would be right to use the Army as a substitute for civilian contractors generally, even it it were possible which, frankly, it is not.

Conclusions

In order to meet urgent requirements in support of the police, the Army has for the last eight months provided both infantry reinforcements and extra engineers. The immediate objectives have now largely been met and we should restore the previous force levels as soon as possible and not seek to use the Army as a source of manpower to meet other problems which require proper long term solutions. Not only would this lead to an apparent setback for our policy of steadily shifting the burden from the Army to the RUC, but also it reduces the Army's ability to respond to genuine emergencies both within the Province and worldwide.

I am sure that we must get back to the 1985 force levels before the 1987 marching season begins and I hope, therefore, you will accept that we should withdraw the extra battalions once we are past the anniversary of the Anglo-Irish agreement according to the timetable outlined in paragraph 8 above. I would, of course, be prepared to reconsider this should there be any significant change in the threat.

I am sending copies of this letter to the Prime Minister, and to Geoffrey Howe, Douglas Hurd and Sir Robert Armstrong.

Yours sincerely

George Younger

(Approved by the Secretary of State and signed in his absence.)

IRELAND: Situation Pt. 21

SECRET

4

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

To await Defence Secretary's reply CDP 18/7.

The Rt Hon George Younger MP
Secretary of State for Defence
Ministry of Defence
Main Building
WHITEHALL
London
SW1A 2HR

18 July 1986

Dear Secretary of State

FORCE LEVELS IN NORTHERN IRELAND

We agreed earlier in the year that force levels in Northern Ireland should be reviewed during the summer with a view to reaching a decision about the timescale within which one or both of the two reinforcement battalions currently in the Province could be withdrawn. This letter also deals with the question of the Prison Guard Force, on which you wrote to me on 4 July.

I recently commissioned a threat assessment dealing with the terrorist threat, the risk of serious public order problems over the next few months, and the impact which the two reinforcement battalions have had. A copy of this assessment ... is in the attached folder. The key findings are:

a) PIRA has maintained a high level of activity this year against a wide variety of targets, using a range of sophisticated techniques and tactics. They have the personnel, the equipment and the resolve to maintain this level of operations. Their continuing campaign of attacking security force bases and intimidating building contractors has been reinforced recently and is proving very hard to combat.

b) INLA has recently regrouped and reorganised and has received a resupply of weapons and explosives. It appears more cohesive and determined than for some time and poses a vicious and unpredictable threat.

/...

SECRET

c) The Anglo-Irish Agreement gives loyalist extremists a clear focus for a campaign of opposition in association with the unionist political campaign. Their efforts to obtain weapons and explosives have met with some success, and loyalist terrorist attacks on Republican targets on both sides of the border have been discussed (and we have recently seen examples in Northern Ireland).

d) There remains a significant threat of large-scale and repeated public disorder associated with loyalist demonstrations throughout the Summer: PIRA will have no compunction about raising tension by, for example, a "spectacular" terrorist attack.

In the light of this, the need for military support remains as compelling as ever. Police stations still depend for their security on an enveloping military presence; while the police themselves handle public order problems, military units must on occasion be held in readiness to give support if necessary; and the diversion of police resources to deal with public order inevitably leads to requests for more military support in the pure anti-terrorist field. The Chief Constable's judgement, which both I and the GOC endorse, is that this intensity of military operations must be maintained at least in the short to medium term.

Political factors support this operational assessment. The withdrawal of troops would be claimed by loyalists as proof that they had been brought in solely to counter loyalist opposition to the Anglo-Irish Agreement. They would argue that we are prepared to deploy extra resources against them but not against Republican terrorists. I have therefore concluded that it is essential to retain two additional reinforcement battalions in Northern Ireland until at least January 1987. It remains my hope that it may then be possible to withdraw one of them, and we will continue to pursue options for reducing static commitments which might, we hope, make this possible.

I recognise the argument that the demands on the armed forces should be reduced, at least in part, by an increase in RUC establishment. I shall be discussing this with the Chief Constable and the GOC before long, and certainly I do not set my face against it in principle. But policemen and soldiers are not inter-changeable, and using the former on tasks which are not exclusively theirs would not be a cost-effective use of resources. I shall naturally be keeping the public order situation under review (some, at least, of our worst forebodings have not yet come to pass): but if the present situation looks like continuing for a lengthy period, we may need to take a critical look at those specific tasks which police officers are well qualified to undertake.

Reducing Static Military Commitments

Since I fully appreciate the strain which your support for our policies in Northern Ireland places on the army, I have been anxious to see what can be done to reduce the number of static military commitments. Some minor steps in this direction have been taken, but the most significant load is the provision of the Prison Guard Force (PGF) at HM Prisons Maze and Belfast. I have therefore studied very carefully the report of the official working party on this problem, and Nick Scott has had a full briefing from HQNI.

There is an argument that the current advice about the rules of engagement for the PGF means that it is pointless to have an armed guard force, but I do not accept this. We must prevent the escape of hardened and experienced terrorists and we must accept that escape or rescue attempts are likely to be meticulously planned and ruthlessly executed. The presence of an armed guard force certainly constitutes a real deterrent in the face of the risk in both prisons of escape attempts involving firearms or explosives in circumstances which would justify the PGF in opening fire. In this context I do not believe unarmed Prison Officers to be an answer.

The GOC has explained clearly that if we can reduce the military commitment to about platoon level, he could absorb this within his present resources. I belive that there is scope for movement in this direction. The key to such a reduction would be the construction of a perimeter fence, on the lines of the one at HMP Maghaberry, and I have commissioned an urgent feasibility study into the design and siting of such a fence, technical aids, the acquisition of land, and the likely costs.

The main problem will almost certainly be the difficulty of getting the job done. I referred earlier to the recent reinforcement of PIRA's campaign of intimidation. We have so far had only limited success in countering this since we cannot compel people to work, or firms or consortia to bid. I believe that it is most unlikely in present circumstances that we will get anyone to tender for the high-profile contract of building a perimeter fence around HMP Maze. I wonder whether in these circumstances you would be prepared to consider allocating Royal Engineer resources to take on this task. I know that these resources are thinly stretched worldwide, but if you felt able to agree, the task could be completed quickly, securely and with certainty, thus enabling us to resolve the problems which the provision of the PGF undoubtedly causes for BAOR.

I had intended in any event to write to you soon about RE assistance with the police building programme. The Engineers have done a marvellous job for which I, the Chief Constable and the Police Authority are profoundly grateful. We do however now have a list of important building works for which civilian contractors have not bid, or are most unlikely to bid. We are

scrutinising this rigorously to identify whether the tasks really are essential and whether there are alternative ways of proceeding, but it is possible that there will be some residual works for which I may have to ask for further RE resources. The alternative is for the RUC to be forced out of some of the most sensitive areas, which in both political and security terms would be a disaster.

Conclusion

I will write to you again about this once we have completed our study of the Police Authority's bid; I would hope by then too to have at least the preliminary results of the feasibility study on the proposed perimeter fence at HMP Maze. Meanwhile I should be grateful if you would consider positively my proposal that two additional reinforcement battalions should continue to be deployed in Northern Ireland until at least January 1987: perhaps we could review the situation again in October. It would also be helpful to have your provisional reaction to the suggestion that RE resources might be used to build a perimeter fence at HMP Maze.

I appreciate the enormous difficulties which my requests are bound to create for you, but the situation is critically poised. The RUC is standing up very well to the pressure placed on it, but its continued performance as it faces both sophisticated and determined terrorist attack, and loyalist obstruction and violence, is crucially dependent on the support of the armed forces.

I am sending copies of this letter, without the Assessment, to the Prime Minister, Geoffrey Howe, Douglas Hurd and Sir Robert Armstrong.

Yours sincerely,

for TK

(approved by the Secretary of State and signed in his absence)

Encl

IRELAND: Situation Pt 21

file CAT

subject cc: master ops.

PRIME MINISTER'S PERSONAL MESSAGE SERIAL No. 132/86

cc NIO FCO

10 DOWNING STREET

THE PRIME MINISTER

16 July 1986

Dear Ron.

I have heard the news that you have signed the Supplemental Appropriations Bill providing $50 million for Northern Ireland and the Republic of Ireland. We are most grateful for this substantial gesture on your part and on the part of Congress, and for your support and sympathy for our efforts to achieve greater peace and stability in Northern Ireland. The resources will be used to help both communities in Northern Ireland and we will now proceed to make the practical arrangements to enable to funds to be disbursed.

Yours ever and warm regards to you both

Margaret

The President of the United States of America

GA.

From: THE PRIVATE SECRETARY

cc PC

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Charles Powell Esq
10 Downing Street
LONDON
SW1A OAA

15th July 1986

Dear Charles,

US CONTRIBUTION TO THE INTERNATIONAL FUND

President Reagan signed last week a Bill providing $50 million for the International Fund which we propose to set up with the Irish: of this some three-quarters (c£25m) will go to Northern Ireland. Following the news that the US contribution was definite, officials have been finalising arrangements with the Irish to enable the Fund to be set up. Mr King hopes to write to the Prime Minister shortly about that when all the administrative details have been sorted out.

In the meantime however it would be appropriate for the Prime Minister to write thanking President Reagan and the US ... Congress. I attach a draft note. I understand that the Irish are sending a similar note.

/ I am copying this letter to PS/Foreign Secretary and PS/Sir Robert Armstrong. I understand the Foreign Secretary would be happy for the Prime Minister to write now.

Yours Sincerely
Neil Ward.

N D WARD

Encl

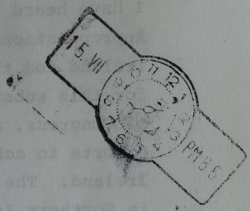
E.B.

Please type as letter from PM CDS.

DRAFT MESSAGE FROM THE PRIME MINISTER TO PRESIDENT REAGAN

I have heard the news that you have signed the Supplemental Appropriations Bill providing $50 million for Northern Ireland and the Republic of Ireland. We are most grateful for this substantial gesture on your part and on the part of Congress, and for your support and sympathy for our efforts to achieve greater peace and stability in Northern Ireland. The resources will be used to help both communities in Northern Ireland and we will now proceed to make the practical arrangements to enable the funds to be disbursed.

JLD


15. VII
PM

CONFIDENTIAL

From: THE PRIVATE SECRETARY

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

Charles Powell Esq
10 Downing Street
London SW1

14 July 1986

Prime Minister less bad than we feared CDP 14/7.

Dear Charles,

THE "TWELFTH WEEKEND" : EVENTS SO FAR

The Prime Minister may wish to have an overview of events connected with the 12 July celebrations so far from midnight 10/11 July to 7 am 14 July.

The weekend's events can be said to have begun in Hillsborough just after midnight in the first hour and an half on Friday morning when some 400 cars converged on the village from Portadown, Lurgan and Dungannon. A crowd of about 4000 formed up into organised groups and paraded peacefully up and down the main Street outside Hillsborough Castle. Dr Paisley, Peter Robinson and William McRea were among those present. No leading members of the Official Unionists were there. The RUC and Army, although present, did not seek to intervene. The crowd dispersed without incident at about 1.30 am.

Although Dr Paisley claimed that this was a show of strength and that they had "taken over" the village in defiance of the security forces, police evidence became available later in the day that the demonstrators had originally planned to catch the security forces in Portadown unawares and to march through the Tunnel and Obins Street. However, the large security force presence there had thwarted that plan and the demonstration in Hillsborough was a face-saving exercise in a non-controversial area where the security force presence was minimal. Nevertheless, as Nicholas Scott said on television in the morning, it was a well-executed stunt; but no more than that.

Tension mounted across the Province as the evening of the "Eleventh Night" approached with a number of contentious marches due, and the widespread lighting of symbolic bonfires accompanied by heavy drinking. Various nationalist politicians and priests were in contact expressing fears about loyalist violence likely to be directed against their communities particularly in Portadown and Ballynahinch. These were passed on to the police.

..../

CONFIDENTIAL

At 9pm the RUC announced that a route, subject to various conditions, had been agreed with the leaders of the Portadown Orange Lodges for their traditional march on 12 July. By using the good offices of Jim Molyneaux, Martin Smyth and Harold McCusker, the Chief Constable had persuaded the march organisers to agree that only eight "country" lodges would march into Portadown town long the Garvaghy Road - a wide through-road flanked by three large Catholic housing estates and one mainly Protestant mixed estate - to join up with the "town" lodges when they would embark on buses and travel to the main Orange Lodge parade in Armagh City.

This decision led to increased tension among Catholics in Portadown and considerable anger among their spokesmen. The Chief Constable pointed out that his decision honoured his statement of 3 July that there would be no marches through the Tunnel along Obins Street during 12-14 July; it undermined Dr Paisley and Alan Wright of the Ulster Clubs who wanted confrontation; and it was the decision that was likely to lead to the least violence in both communities in the following 24 hours.

There was considerable public disorder across the Province during Friday night and the early hours of Saturday morning. The worst was in Portadown, mainly at the interface between the Protestant Edgarstown area and the Catholic Obins Street. About 1000 people were involved; 150 plastic baton rounds (PBRs) were fired; 14 policemen and a number of civilians were injured, none seriously. The expected serious attacks on Catholics in Ballynahinch were successfully prevented by the RUC and the Army. Among the other places where violence occurred - more often than not directed by loyalists against the police - were Londonderry, Limavady, Belfast, Lisburn, Larne, Kilkeel and Ballymoney. In total during the night the police fired 186 PBRs and two injured policemen were detained in hospital.

In contrast to the previous night's violence the Saturday 12 July marches passed off with little incident mainly in good humour and a holiday atmosphere. Nevertheless the day's speeches reflected the undiminished opposition of the vast majority of the unionist population to the Anglo-Irish Agreement. The Portadown march proceeded down the Garvaghy Road strictly according to the conditions imposed by the police and with only token opposition from a few Catholic residents.

There were some disturbances in Portadown and other towns during the late afternoon and evening as the marchers returned but it was generally sporadic hooliganism involving stone throwing by small numbers of youths. A measure of the successful way in which the police handled the day's events is the fact that from 7am Saturday until 7am Sunday only 17 PBRs were fired.

The worst incident of naked sectarianism occurred last night just before midnight in the County Antrim village of Rasharkin when a gang of about 50 men dressed in paramilitary-style clothing and carrying pick handles and cudgels attacked a small Catholic community in this predominantly Protestant area. Homes were broken into and

badly damaged, parked cars were attacked and one youth was badly beaten. The police report a series of incidents in the area involving mobile gangs from both sides of the community mounting sectarian attacks in the Ballymoney and Kilrea areas. Police investigations are continuing and arrests are expected.

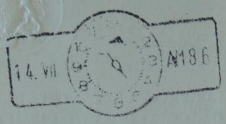
The RUC statistics for this weekend's violence from 7pm on 11 July to 3am on 14 July are 128 policemen injured; 66 civilians injured; 281 PBRs fired and 127 arrests made. This is an unacceptably high level of public disorder reflecting the tension between the communities at this traditionally emotive time of the year in Northern Ireland; and there are still today's marches to come. But the Province is not in the critical state that some had predicted and in most parts of the Province ordinary people have enjoyed the traditional holiday weekend. Despite criticism by nationalist politicians of his handling of the Portadown march, the Chief Constable and the RUC can rightly consider their plans to maintain the peace over this tense period to have been in the main successful. The Secretary of State is encouraged by what he sees as further evidence that the majority of the unionist people abhor the activities of their own hooligan fringe elements and do not see confrontation with the security forces as a way to solving their problems over the Anglo-Irish Agreement.

Yours Sincerely

Neil Ward

N D WARD

CAM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SUBJECT cc MASTER
OPS

10 DOWNING STREET

THE PRIME MINISTER

11 July 1986

PRIME MINISTER'S
PERSONAL MESSAGE
SERIAL No. T130/86

Dear Prime Minister,

Geoffrey Howe has told me of your decision to make a contribution of NZ$300,000 to the International Fund for Ireland. I wanted you to know at once how grateful and delighted I am by this news. Your action will help to make the International Fund truly international and I know that it will be much appreciated by the people of both parts of Ireland.

Yours sincerely,

Margaret Thatcher

The Right Honourable D. R. Lange.

SECRET

File

DG2BFY

3

cc: OD(1)
D/Energy.
CO
Sur PC

10 DOWNING STREET

From the Private Secretary

11 July 1986

Dear Jim,

CONTINGENCY PLANNING FOR NORTHERN IRELAND

The Prime Minister has seen the minute of 4 July from the Secretary of State for Defence to your Secretary of State. She has also now seen a copy of the report on the overall state of contingency planning for Northern Ireland prepared by the Secretary of the Civil Contingencies Unit (CCU) following his visit to Belfast on 2 & 3 July.

The Prime Minister appreciates the problems that could arise if the scope of contingency planning to counter the effects of a politically inspired strike against the Anglo-Irish Agreement became too widely known outside Government circles. She hopes, however, that some way can soon be found to permit the degree of consultation necessary to allow at least the plan for the maintenance of electricity supplies to be brought to a state in which Ministers could have confidence that it will work. She also believes it is highly desirable that the necessary consultations should be authorised, outside the Province if necessary, to raise the level of confidence that other plans - particularly those for the maintenance of water and sewage services and oil product delivery - could also be implemented successfully.

BF

The Prime Minister would be most grateful for an early and comprehensive report on likely endurance should it prove necessary to implement all the contingency plans concurrently. The Secretary of State for Defence has mentioned some of the factors involved and the Prime Minister notes that he does not accept that operator fatigue would be the determining factor as mentioned in your letter of 16 June to me. As potential endurance is bound to be a critical issue should Ministers need to consider activating the plans, agreement on this point should be achieved as soon as possible.

The Prime Minister would also be glad to know what progress is being made on work to complete planning for the distribution of essential supplies to end users, and on any

SECRET

steps you may be taking to take up the points in Brigadier Budd's report on overall co-ordination, public information and keeping essential routes open.

I am copying this letter to the Private Secretaries to the other members of OD(I), Geoff Dart (Department of Energy) and to Michael Stark (Cabinet Office).

Yours sincerely,

Charles Powell

Charles Powell

Jim Daniell, Esq.,
Northern Ireland Office.

CONFIDENTIAL

CC PC
AR

Foreign and Commonwealth Office

London SW1A 2AH

10 July 1986

Dear Charles

Prime Minister's Visit to Canada: 11-13 July:
International Fund for Ireland

The FCO has given the Prime Minister a brief on the International Fund for Ireland. You will wish to draw to her attention two further pieces of news.

First, the State Department have told us in the strictest confidence that the Canadian contribution is likely to be Canadian $2 million per year for 5 years. Secondly, the New Zealand High Commissioner wrote to the Foreign Secretary on 9 July to tell him that the New Zealand Government has agreed to make a contribution of NZ$300,000 (about £110,000) to the Fund. The Irish Government has also been informed.

If, as our brief suggested, Mr Mulroney formally tells the Prime Minister when they meet of the Canadian contribution, she may wish to make the point in thanking him that the Canadian contribution will play a significant part in making the Fund properly international and therefore be of benefit politically to us both here and in Washington. The New Zealand Government have asked that no publicity be given to their contribution for the time being. If the Prime Minister mentions it to Mr Mulroney, she should ask him to respect her confidence. She may wish to thank Mr David Lange privately, and I enclose a draft letter for this purpose.

We still await any definite news from the Australian Government regarding a possible contribution.

Yours ever

Robin Culshaw

(R N Culshaw)
Private Secretary

C D Powell Esq
PS/10 Downing Street

CONFIDENTIAL

DSR 11 (Revised)

DRAFT: minute/letter/teleletter/despatch/note

TYPE: Draft/Final 1+

FROM: Prime Minister

Reference

DEPARTMENT: TEL. NO:

SECURITY CLASSIFICATION

Top Secret
Secret
Confidential
Restricted
Unclassified

TO: Mr David Lange
New Zealand Prime Minister

Your Reference

Copies to:

PRIVACY MARKING

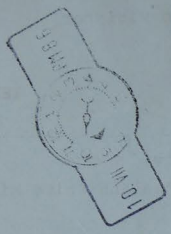
.....In Confidence

CAVEAT.....

SUBJECT:

Geoffrey Howe has told me of your decision to make a contribution of NZ$300,000 to the International Fund for Ireland. I wanted you to know at once how grateful and delighted I am by this news. Your action will help to make the International Fund truly international and I know that it will be much appreciated by the people of both parts of Ireland.

Enclosures—flag(s).....



Prime Minister 2
Agree that I should write as proposed?
CDP 10/7.

SECRET

P 02166

From: J B UNWIN
10 July 1986

MR POWELL - NO 10

cc Sir R Armstrong
Mr Mallaby

Contingency Planning for Northern Ireland

FLAP PT 20

I minuted to you on this subject on 27 June. Since then the Defence Secretary has made a number of further points in his minute of 4 July to the Northern Ireland Secretary; and Brigadier Budd has reported to me the outcome of his talks in Belfast . Both confirm our anxieties about the state of contingency planning in Northern Ireland.

2. The Defence Secretary's minute explains more fully the Ministry of Defence's views on a variety of factors that might limit the overall endurance of the Northern Ireland MACM plans to something under a month. It puts particular stress on the inhibitions on effective planning imposed by the ban on consultation outside Government, particularly in relation to the maintenance of electricity supplies, on which effective implementation of virtually all other plans depends.

3. Brigadier Budd's report (of which you may like to have the attached copy) confirms the importance of the need for outside consultation, and raises a number of other important points on which further work in Northern Ireland urgently needs to be done. Once contingency measures are in train, the responsibility for day to day coordination and supervision rests with the Northern Ireland Emergency Committee (NIEC). But the CCU remains responsible for coordinating the preparation and implementation of plans to maintain the essentials of life in an emergency, and for keeping those plans under regular review,throughout the whole UK. Hence my intervention in this case

4. In view of the above, I think it would be right for the Prime Minister to intervene again and I attach an appropriate draft. If, however, the Prime Minister did not wish to do so, I could, as an alternative, convey the points to the Northern Ireland Office in my capacity as Deputy Chairman of the CCU. I

think it would be helpful, however, if the Prime Minister gave here authority to the importance of improving the present Northern Ireland Plans.

J B UNWIN

Cabinet Office

SECRET

NORTHERN IRELAND CONTINGENCY PLANNING

Notes of discussions held in Dundonald House, Belfast on 2 & 3 July 1986.

Introduction

1. Arrangements for these discussions were made by Mr Brian Doherty and Mr Ian Kennedy. I had a general discussion on 2 July with Mr Sean McKillop - head of the Criminal Justice Division of the Northern Ireland Office (to whom Messrs Doherty and Kennedy work). This division is responsible for Civil Emergency Planning.

2. In the event I was unable to see the Chairman of the Northern Ireland Emergency Committee - nor did I see the Secretary of that Committee, who was on annual leave.

3. On the morning of 3 July I had a conference with representatives of the Northern Ireland Departments of Economic Development (Messrs Beaman, Cherry and McMinnis) Environment (Mr Graham) and Health and Social Services Mr Corry). These departments have individual/lead responsibility for one or more contingency plans.

Discussion with Mr McKillop

4. A wide ranging discussion touched on virtually all aspects of contingency planning to counter the effects of a political strike against the Anglo-Irish Agreement. Points relating to individual plans will be incorporated under the appropriate heading later in this record. The following main points emerged:

a. The ban on consultation outside Government was making certain aspects of sound contingency planning virtually impossible. A move is already in hand to obtain a relaxation of the ban in connection with the maintenance of electricity supplies - without which other contingency plans could not work;

b. In the event of a political strike it was expected that the majority of civil servants would wish to work as normally as possible and certain parts of a number of plans (particularly on the paper work side) relied for their success on civil servants undertaking jobs either normally carried out by company employees (eg

oil supplies) or arising from the contingency plans themselves (eg distribution of essential food supplies);

c. The Northern Ireland Office, in consultation with HQ Northern Ireland, were doing further work to explain more clearly why it is anticipated that contingency plans might overall not be expected to endure for longer than 3-4 weeks, although it was possible that individual plans might endure longer.

Discussion of Individual Plans

5. **Maintenance of Electricity Supplies (MACM Plan Clout)** This plan is essential to the success of others. Effective contingency planning cannot proceed until the ban on consultations outside Government is eased. Adequate consultation might be possible in Great Britain - eg with management of CEGB/SSEB who might run systems similar to those in Northern Ireland, with adequately qualified consultants or with the manufacturers of the system in use in Northern Ireland. Operation of the generating and distribution system must be catered for. Even in the circumstances of a widespread political strike it was considered unlikely that employees of the NIES would sabotage their installations or connive at an unsafe closedown - although the possibility of damage (eg at some of the more remote points of the distribution system) could not be ruled out. Provision of an alternative labour force from civilian, rather than service, sources in GB would be very difficult to manage and could lead to further protection commitments for the RUC/Army. The MOD have not yet been asked to consider the possibility of training service personnel to man the electricity supply and distribution systems in advance of an actual threat to disrupt these supplies. It was not known when a decision about easing the ban on consultation outside Government would be taken but it appears to be the single most important factor inhibiting the development of this vital plan.

6. **Maintenance of oil supplies (MACM Plan Manorial)** There was some confidence that servicemen could operate the main oil distribution terminal in Belfast with minimum participation by normal management and supervisors - one man it was thought would suffice, although his personal endurance may be an inhibiting factor. The distribution terminal in Londonderry should be operable without management assistance if in fact it proved necessary to use it. There remained some doubt about the status of

calor gas as an essential of life and therefore the degree to which the filling facilities would need to be operated by servicemen. (Special training would be required) Work is in progress on this point but progress would be hastened if the ban on consultation outside Government could be eased in this area also. The issue of vouchers to permit those authorised to have access to oil products from service manned filling stations (21 are envisaged) is planned to be handled by civil servants operating from Job Centres and/or Social Security benefit offices. Payment would be made before vouchers were issued. Confidence in the likely successful implementation of this plan is enhanced by experience gained in 1977 when servicemen delivered oil products (but did not man petrol filling stations).

7. Working the Ports and Distributing Essential Supplies (MACM Plan Odell) As only two ports are involved, Larne (RO-RO) and Belfast (break bulk operations handling, inter alia, flour, wheat and animal feed) it is considered that the MACM plan has a good chance of working effectively. Management participation on the earlier stages is desirable at Belfast docks to facilitate a smoother "run in period" than might otherwise be achieved. The MACM plan also provides for the transport of essential supplies to warehouses which are either within dock areas or within 3 miles of the dock gates. A further contingency plan is being developed in Northern Ireland to provide for staffing the warehouses, accounting for essential supplies and if necessary transporting them to distribution points. It was not clear how much time would be needed to complete this part of the overall plan. Nor was it clear how essential goods would be transported from warehouses to distribution points should the normal means of transport be unavailable. It appeared that a further demand for service assistance could arise and work to identify the size and scope of the requirement needs to be pursued urgently. It is intended that the warehouses should be manned by civil servants. Until the second plan is ready it is not possible to evaluate the chances of success of arrangements for the maintenance of essential supplies.

8. Maintenance of Water Supplies and Sewage Services (MACM Plan Footway) It was considered that, given the availability of standby generating plant to provide power for pumps and other machinery, plus the fact that virtually all water supplies in the Province are gravity fed (North Belfast is the major exception) there was a reasonable chance of these services being adequately maintained in the absence of the normal workforce and management. Information was not immediately available about industrial water requirements - particularly for continuous process plants, but it was assumed that,

in the circumstances being considered, such plants would be closed down in an orderly fashion by their normal operators, to ensure they could be re-started in due course. The extent to which electricity generating stations are reliant on public water supplies would also need to be established clearly.

9. **Provision of an emergency fire fighting capability (MACM Plan Bickley)** There would seem to be no reason why this plan should not work effectively. Further consideration should be given to overcoming any difficulties that might arise in issuing fire fighting appliances (known as "Yellow Goddesses" in NI) from their storage depots should normal depot staff not be available.

Other Areas of Concern

10. **Maintenance of Health & Ambulance Services** There is no MACM plan for these services. Experience over a number of years, and in widely differing circumstances, indicate that the essentially humanitarian nature of these services will achieve a high enough degree of voluntary service and public cooperation to ensure adequate emergency levels of hospital and ambulance services. Planning would need to include measures for informing the public, at the appropriate time, about the emergency arrangements being made.

11. **Keeping essential routes open** Many of the contingency plans will rely for their success on sufficient routes being kept open. It was not clear whether a plan had yet been developed, or was indeed feasible in advance, to decide which routes needed to be kept open, for how long each day, and how such an operation would be controlled. The Northern Ireland Emergency Committee (NIEC) would have a major coordinating role to play, but because it appears impracticable to exercise this aspect of the NIEC's responsibilities the preparation of a specific contingency plan - related to all the other plans which rely for their success on road (and in certain circumstances rail) movement might be considered.

12. **Public Information** In view of the importance attached by the Secretary of State to this aspect of dealing with the effects of a political strike against the Anglo-Irish Agreement, and the possibility that a high proportion of the population may be dis-inclined to believe what they are told, or to cooperate with the emergency

arrangements it would seem advantageous to have plans prepared so that all concerned are clear about the overall policy, the way it is intended to manage implementation and the part that each department of Government and others in the Province will need to play.

13. **Overall Coordination** This would be the responsibility of the NIEC. The contingency arrangements to maintain the essentials of life in the particular circumstances being considered are necessarily inter-related and complex. Consideration might be given to the potential advantages of holding briefing sessions or perhaps a seminar for members of the NIEC, to achieve the best possible understanding of the overall scope of the plans and identify in advance likely difficulties and p;ossible solutions.

Summary

14. The discussions gave an opportunity to consider the current state of contingency planning to maintain the essentials of life in the face of a politically inspired strike in protest against the Anglo-Irish Agreement. A number of areas were identified in which further work appeared to be necessary. Action on the following points was either in hand or should be considered, as a matter of some urgency, by the relevant departments of the Northern Ireland Government:

a. Relaxation of the ban on consultation outside Government - particularly with regard to the maintenance of electricity supplies and perhaps in other cases;

b. Completion of the plan for moving essential supplies onwards from warehouses;

c. Clarification of the need to maintain LPG (calor gas) supplies;

d. Preparation of contingency plans for:

i. keeping essential routes open;

ii. public information.

e. Arrangements for overall coordination should the plans need to be implemented.

BRIGADIER J A J BUDD

9 July 1986

IRELAND
SITUATION
PT 24

SECRET

To ISMP
CBI

DRAFT:

From: PS/Prime Minister

To: PS/Secretary of State for Northern Ireland

cc Private Secretaries to other members of OD(I)
Private Secretary to S/S for Energy
Sir Robert Armstrong

D/28/4

Contingency Planning for Northern Ireland

The Prime Minister has seen the minute of 4 July from the Secretary of State for Defence to your Secretary of State. She has also seen a copy of the report on the overall state of contingency planning for Northern Ireland prepared by the Secretary of the Civil Contingencies Unit (CCU) following his visit to Belfast on 2 & 3 July.

The Prime Minister appreciates the problems that could arise if the scope of contingency planning to counter the effects of a politically inspired strike against the Anglo-Irish Agreement became too widely known outside Government circles. She hopes, however, that some way can soon be found to permit the degree of consultation necessary to allow at least the plan for the maintenance of electricity supplies to be brought to a state in which Ministers could have confidence that it will work. She also believes it is highly desirable that the necessary consultations should be authorised, outside the Province if necessary, to raise the level of confidence that other plans - particularly those for the maintenance of water & sewage services and oil product delivery - could also be implemented successfully.

The Prime Minister would be most grateful for an early and comprehensive report on likely endurance should it prove necessary to implement all the contingency plans concurrently. The Secretary of State for Defence has mentioned some of the factors involved and the Prime Minister notes that he does not accept that operator fatigue would be the determining factor as mentioned in your letter of 16 June to me. As potential endurance is bound to be a critical issue should Ministers need to consider activating the plans, agreement on this point should be achieved as soon as possible.

The Prime Minister would also be glad to know what progress is being made on work to complete planning for the distribution of essential supplies to end users, and on any steps you may be taking to take up the points in Brigadier Budd's report on overall coordination, public information and keeping essential routes open.

I am copying this ~~minute~~ letter to the Private Secretaries to the other members of OD(I), the Private Secretary to the Secretary of State for Energy and to Sir Robert Armstrong.

CR

CONFIDENTIAL

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

M.L. SAUNDERS
LEGAL SECRETARY

CDP
7/7.

A Brennan Esq. CB
Northern Ireland Office
Whitehall
London SW1A 2AZ

7 July 1986

Dear Tony,

AG'S REPLY TO MR ROGERS

I am enclosing a copy of the letter the Attorney General has sent to Mr Rogers.

You will see that the Attorney has included the redraft of the concluding passage sugessted by David Goodall, but has reinserted the sentence:

> "I find your reference to Judges 'permitting the background and perhaps their political inclination to influence their judgment' especially unacceptable".

The Attorney was aware of certain recent obiter dicta when he considered the draft. He considers however that these isolated and unfortunate remarks do not establish that the judgment of members of the judiciary has been influenced by their background and political inclination. The Attorney feels strongly that this particular allegation made by Mr Rogers should be expressly rebutted.

I am copying this letter to Tom Legg, John Steele, Charles Powell, Gerald Clark and Michael Stark.

Yours sincerely,
Michael Saunders.

M L SAUNDERS

CONFIDENTIAL

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

John Rogers Esq. SC.,
Attorney General
Attorney General's Office
Dublin 2
Republic of Ireland

4 July 1986

Dear John.

Thank you for your letter of 11 June.

I am sorry that the first matter to which you refer, that of Brendan Burns, is one which gives rise to difficulty for you. In view of the particular difficulty which you mention concerning Detective Chief Inspector Neilly's affidavit I will enlarge on the position.

Burns in paragraph 12 of his affidavit of 28 May 1984 deposed that he was:

> "astounded at having been arrested on the said warrants as aforesaid because I believe that neither the Military, Police or Administrative Authorities in the said Six County Area or in Britain itself are in possession of any generally acceptable legally admissible evidence such as forensic scientific evidence or visual identification evidence .... I am in the most real fear that a person popularly known by the term "Supergrass" (or perhaps several such Supergrasses) has or have emerged to offer to give false evidence against me ...."

The 15 warrants for the arrest of Burns arose out of three incidents. The first of these was a van bomb placed outside Warrenpoint RUC Station on 19 April 1981. This van had been stolen in the Republic of Ireland and the number plates on it were false. Examination of the rear number plate revealed one palm and one finger impression of Burns. The second incident was an explosion at Newry on 19 May 1981 which caused the death

.../of

of five soldiers. An estimated 600 lbs of explosive was detonated by means of a command wire connected to a battery pack consisting of five batteries and a bell push switch. The batteries were taped together. On one of these a fingerprint identified as that of Burns was found. The third incident was an explosion at Crossmaglen on 2 October 1982 which injured a soldier on foot patrol. Detonation of the explosives was by means of a command wire connected to a battery pack consisting of five batteries and a bell push switch. The batteries were taped together and on the middle one two fingerprints identified as those of Burns were found.

In his affidavit sworn on 21 December 1984 Detective Chief Inspector Neilly in paragraph 4 deposed that :

> "The plaintiff in his affidavit has not sought to disclaim his involvement in or responsibility for the perpetration of the said offences and contrary to the averment contained in paragraph 12 of the said affidavit I say that there is forensic scientific evidence that the plaintiff was one of the persons responsible for the commission of the said offences."

This averment was a proper one and I think you will agree it was justified. To the knowledge of the officer, Burns was linked by forensic evidence with each incident. The question which subsequently arose however was whether in the light of decisions reached by the Courts in Northern Ireland in McGLINCHEY and MARTIN the evidence was sufficient to justify continuing to seek the return of Burns to Northern Ireland to face trial.

In McGLINCHEY, the Lord Chief Justice at a pre-trial hearing ruled that fingerprint evidence proposed to be tendered by the Crown under the "similar fact" principle should not be adduced. Subsequently the remaining fingerprint evidence, upon which the trial Judge convicted on 24 December 1984, was held by the Court of Appeal on 9 October 1985 to be insufficient. In MARTIN, where a conviction was founded on fingerprint evidence adduced under the similar fact principle the Court of Appeal on 3 October 1985 held the evidence to be inadmissible, quashed the conviction and stated that it is

.../the

the duty of the Crown to assist the administration of justice by refraining from relying on the doctrine of similar fact evidence except in cases to which the principle seems clearly to apply.

It was with these matters in mind that on re-examination of the evidence available against Burns the conclusion was reached that the similar fact principle could not be said clearly to apply and thus the case was not sufficiently strong to continue to seek Burns's return from the Republic.

That there were procedural errors in connection with the warrants issued for the arrest of Burns is highly regrettable. We are both aware of the difficulties in this field which our respective officials are endeavouring to identify and reduce if they cannot be entirely eliminated. It should also not be forgotten that there were a number of unfortunate episodes in relation to the steps taken in the Republic to have Burns returned to Northern Ireland.

I hope that in the light of what I have written you will understand that not only was Detective Chief Inspector Neilly's affidavit a proper one but so was the decision which I took. Further, it was taken following what we both agreed would be the proper course to adopt in respect of terrorist extradition cases, namely that in the light of experience to date the evidence in all cases and potential cases should be carefully re-assessed. I had expected you to welcome my reassessment of the Burns case to ensure that we would not suffer the difficulties of another McGLINCHEY.

Finally, on Burns, I find it difficult to understand why the events of 4 December 1985 took you entirely by surprise. As I understand what occurred, an application for habeas corpus came on for hearing in Dublin on 22 November 1985 on grounds that the warrants were defective. The Court adjourned the application so that an application for certiorari to quash the warrants could be brought in Northern Ireland. The State Solicitor's Office informed the Crown Solicitor's Office of this development.

.../What

What you have written with regard to the second matter in your letter causes me rather more concern.

I find it impossible to reconcile your stated wish not to impugn the integrity of any members of the Northern Ireland Judiciary, or to suggest any conscious bias on the part of any of its members, with some of the remarks which you go on to make. I have had a long experience of the Northern Ireland Judiciary - starting in 1972 when I was Solicitor General - and I have had throughout the whole of the time since then the greatest admiration for the judicial capacity, integrity and courage of the judges in Northern Ireland. I find your reference to judges "permitting their background and perhaps their political inclination to influence their judgment" especially unacceptable. I reject the comments which you have made as wholly unfounded.

Our joint task has been to look for ways in which public confidence in the administration of justice and the rule of law in Northern Ireland can be enhanced. There are unfortunately many ways in which it can be, and on occasion has been, undermined. It should be no part of our contribution to do that. For this reason, I believe it to be particularly unfortunate that you should link the case you are seeking to make for three-man courts with the kind of criticisms of the Judiciary advanced in your letter. I believe that if it became generally known that you had made such comments, and I hope very much that it will not, there would be a major outcry in Northern Ireland which could only make implementation of the Agreement more difficult. I should perhaps also remind you that the acquittal rates in single judge courts are on par with, or even slightly above, those in jury courts in Northern Ireland. This is an additional reason why I find your imputation of political bias in the single judge courts unacceptable.

Just as your letter gave me a full understanding of your position and difficulties, I hope that this reply will clarify for you my own position and views.

Yours ever. Michael.

MO 19/3V

SECRETARY OF STATE FOR NORTHERN IRELAND

NORTHERN IRELAND: CONTINGENCY PLANNING

I have seen the correspondence between your Private Secretary and No 10 about how long our MACM contingency plans for Northern Ireland could be expected to maintain essential services in the face of widespread political strikes. I hope very much that we will never be faced with such a prospect but, if we are, it will be essential that we make our decisions on the basis of the best possible assessment of the likely effectiveness and potential weaknesses of our plans. For this reason, I would like to spell out more fully the MOD view of the prospect of sustaining all the plans in simultaneous full operation and to draw attention to a key area in which I believe it is essential that we undertake further work immediately.

2. First, I should emphasise that the plans are intended as a response to industrial action in key industries (whether separately or together) and do not explicitly allow for additional problems which might be encountered if such action was combined with wider civil disobedience which resulted, for

example, in widespread obstruction of roads or deliberate sabotage. If these circumstances were to arise the Army would, of course, do its utmost to assist the RUC in dealing with them, but it is virtually impossible to predict the extent to which such extra problems, and the need to divert resources to meets them, would affect the sustainability of individual MACM plans.

3. Leaving aside the problems of wider civil disobedience, we have in general terms shared your assessment that the present plans, if implemented simultaneously, should enable us to sustain essential services in the Province for a little less than a month. But this is a rather over-simplified limit. It would not necessarily be impossible to sustain services for a longer period (we do not see operator fatigue as the determining factor), but by that time it would be necessary to cope with additional factors such as the cumulative effects of the lack of maintenance of essential plant and extra logistic load of the 7000 additional troops in the Province. This would almost certainly require further resources, some of which might not be within the capability of the Services to provide. In particular, in the absence of civilian managers and technicians, there is likely to be a failure or progressive run down of the water and electricity supply systems. Moreover, it is likely that the Provisional IRA (and possibly Protestant extremist groups) will by then have been able to step up their terrorist activity to exploit the situation.

4. Our further study into the problems of sustaining all the MACM plans simultaneously has drawn attention to the crucial importance of water and, above all, electricity - on which the water supply itself depends. I have already referred to the increasing difficulties which we would face in maintaining these supplies beyond the initial period. If we are to make a realistic assessment of our ability to cope beyond this we must have expert advice and I do not think we can afford to leave this until the problem is upon us. Equally, given the importance of these industries to all our plans, I believe that we would be unwise to reply entirely on our own limited expertise even in planning for the initial period. I understand why you have not so far felt able to go outside Government in preparing your plans, but if we do not do so we leave ourselves at much greater risk of overlooking potential problems which could undermine our plans.

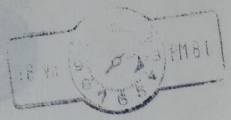
5. Although I have emphasised the importance of electricity and water, there may also be other areas where we could benefit from some outside help. For example, our experience with contingency plans for Great Britain has shown that the Services have no experience in the particular problems of handling Liquified Petroleum Gas (LPG). If you still feel unable to go outside Government within Northern Ireland, it should be possible to obtain the necessary advice discreetly from sources on the mainland.

6. I am sending copies of this minute to the other members of OD(I) and the Secretary of State for Energy, and to Sir Robert Armstrong.

G.H.

Ministry of Defence
4th July 1986

IRELAND
SITUATION
PT 21



CONFIDENTIAL

CC PC

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

CDP 4/7.

The Rt Hon George Younger MP
Secretary of State for Defence
MOD Main Building
WHITEHALL
London
SW1A 2HB

3 July 1986

Dear George

CONTINGENCY PLANNING

FLAP PT 20

Thank you for your minute of 18 June in which you dealt with two points on the use of servicemen in the context of a prison problem.

I readily accept what you say, and confirm that this is the basis of our planning. I had not previously taken the point that a Defence Council Order would be necessary in circumstances of industrial action by Prison Officers because the troops would be acting under MACM arrangements, as opposed to the MACP arrangements which govern the Prison Guard Force. As a separate point, I hope to write to you about the PGF and related matters within the next few days.

Copies of this letter go to the Prime Minister, the other members of OD(I) and Sir Robert Armstrong.

Yours

TK

JLD

CONFIDENTIAL

IRELAND

SITUATION

PT 21

CONFIDENTIAL

CCPC

Foreign and Commonwealth Office

London SW1A 2AH

2 July 1986

M L Saunders Esq
Attorney General's Dept
Royal Courts of Justice
London WC2A 2LL

CDP 2/7

Dear Saunders,

ATTORNEY-GENERAL'S REPLY TO MR ROGERS

1. Gerald Clark has shown me Mr Rogers's letter of 11 June to the Attorney-General together with your draft reply (enclosed with your letter of 23 June to Tony Brennan). I have also seen Tony Brennan's reply of 27 June and Richard Stoate's letter to you of 25 June.

2. I am not able to comment on the details of the Burns case, which seems to have been as much a factor in sparking off Mr Rogers' letter as the desire (perhaps on the part of his Cabinet colleagues) to modify the impression he gave at the IGC meeting on 9 May of having no criticisms of the present NI Judiciary. On the second point - Mr Rogers's imputations against the Judiciary - I fully agree that his letter requires a firm reply. If its contents were to leak, the effect on unionist opinion would be highly inflammatory and it would be extremely damaging if we had let it pass without comment.

3. Like Tony Brennan, however, I do not think it would be wise in responding to Mr Rogers's remarks to give the impression that we are unaware of, or unconcerned by, some of the obiter dicta which have occasionally been made by judges in Northern Ireland in recent years or to adopt too gladiatorial a tone in the Judiciary's defence. I think our aim should be to rebut the charges firmly but without using language which might stimulate a riposte. It seems to me that our aim should be to make Mr Rogers feel ashamed of himself rather than simply to make him angry. We need also to warn him of the very serious consequences which would follow in Northern Ireland were his comments to become public. I enclose for your consideration an illustrative redraft of pages 5 and 6 of your draft, which seeks to take account of these points.

4. I am copying this letter to Tom Legg, John Steele, Charles Powell, Tony Brennan and Michael Stark.

Yours sincerely

David Goodall

A D S Goodall

CONFIDENTIAL

REDRAFT OF CONCLUDING PASSAGE OF PROPOSED DRAFT LETTER FROM SIR MICHAEL HAVERS TO MR JOHN ROGERS

I find it impossible to reconcile your stated wish not to impugn the integrity of any members of the Northern Ireland Judiciary, or to suggest any conscious bias on the part of any of its members, with some of the remarks which you go on to make. I have had a long experience of the Northern Ireland Judiciary - starting in 1972 when I was Solicitor General - and I have had throughout the whole of the time since then the greatest admiration for the judicial capacity, integrity and courage of the judges in Northern Ireland. I reject the comments which you have made as wholly unfounded.

Our joint task has been to look for ways in which public confidence in the administration of justice and the rule of law in Northern Ireland can be enhanced. There are unfortunately many ways in which it can be, and on occasion has been, undermined. It should be no part of our contribution to do that. For this reason, I believe it to be particularly unfortunate that you should link the case you are seeking to make for three-man courts with the kind of criticisms of the Judiciary advanced in your letter. I believe that if it became generally known that you had made such comments, and I hope very much that it will not, there would be a major outcry in Northern Ireland which could only make implementation of the Agreement more difficult. I should perhaps also remind you that the acquittal rates in single judge courts are on a par with, or even slightly above, those in jury courts in Northern Ireland. This is an additional reason why I find your imputation of political bias in the single judge courts unacceptable.

Just as your letter gave me a full understanding of your position and difficulties, I hope that this reply will clarify for you my own position and views.

IRELAND

SITUATION

PTZ

PART 20 ends:-

CDP to B. Unwin 27.6.86

PART 21 begins:-

FCO to Att. Gen's Office 2.7.86.