

An Chartlann Náisiúnta
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Cabinet Meeting concerning security measures

Steering Note for Minister for Foreign Affairs

19 August 1998

1. The Government will meet on Wednesday, 19 August 1998, to review the additional security measures which could be taken in response to the bombing in Omagh. This meeting follows from Monday's meeting between the Minister for Justice and the Secretary of State for Northern Ireland, together with the RUC Chief Constable and the Garda Commissioner, at which they discussed security measures which might be taken by both sides.

17.8.98

2. We are in on-going contact with the Department of Justice, Equality and Law Reform officials currently drafting the Memorandum for this morning's meeting. We are advised that the proposed package of measures will not include internment or "hot pursuit". Based on information provided to date by the Department of Justice, Equality and Law Reform and reports in the media, we understand that the package to be considered this morning will involve:

(i) amendments to the Offences against the State Act aimed at improving its effectiveness against members of illegal organisations by introducing detention provisions similar to those already in place to deal with drug trafficking and addressing the issue of providing corroborative evidence for a chief superintendent's opinion that a person is a member of an illegal organisation. These measures, we understand, may include amending the right to remain silent so as to allow a court to draw an inference from the silence and allowing account to be taken of association with members of paramilitary organisations along with a failure to account for one's movements);

(ii) additional resources being allocated to the Garda to enable more cover in the Border area; and

(iii) the early implementation of the 1996 Bail Referendum for terrorist offences which would provide for the refusal of bail in cases where a chief superintendent believes that the person before the Special Criminal Court may offend again.

3. With regard to internment, while there had been speculation regarding its re-introduction, it became clear that both Governments did not favour the use of this measure. Embassy, Washington reported that an NSC contact had expressed the hope that the authorities in both

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jurisdictions would not adopt security measures, particularly internment, which could be counterproductive and have the effect of undermining the Good Friday Agreement.

Compliance with international human rights instruments

4. It will be important to ensure that all measures taken are consistent with our obligations under international human rights instruments, notably the European Convention on Human Rights.

5. This has particular relevance to the proposal to extend the period of detention from forty eight hours to seven days. The European Court of Human Rights has held (*Brogan v. UK*) that an analogous provision of the Prevention of Terrorism Act, which allows for detention **on the authority of the Secretary of State** for five days beyond an initial period of 48 hours, is in breach of the Convention. (The specific case involved detention for a period of four days and six hours.) The UK has accordingly been obliged to resort to a derogation, which we have frequently called on them to review.

6. In this jurisdiction, the Criminal Justice (Drug Trafficking) Act 1996 allows for the detention of persons suspected of drug trafficking offences to be detained initially for up to 48 hours on the authority of Gárda officers. Detention may be authorised for subsequent periods of 72 hours and 48 hours (to a maximum of seven days), but this can only be done on judicial authority, and various conditions are attached. These include that the judge is satisfied that the further detention is necessary for the investigation, and that the investigation is being conducted diligently and expeditiously.

7. It will be important to ensure that any extension of detention to seven days in the case of terrorist offences be accompanied by similar safeguards. We understand this is the intention.

8. The Taoiseach proposes to issue a statement after the Cabinet meeting. This is being drafted by the Department of the Taoiseach, with input from Anglo-Irish Division. The latest draft is attached; it may, of course, be further altered in the course of the morning and the Cabinet meeting itself.

Anglo-Irish Division
19 August 1998

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