

CONFIDENTIAL

PS/PUS(L)

cc: PS/PUS(B) - BLIS
PS/Mr Bloomfield - BLIS
Mr Brennan
Mr A W Stephens - BLIS
Mr Chesterton
Mr Elliott - BLIS
Mr Innes - BLIS
Mr Spence - BLIS
Miss Elliott
Mr S Hewitt - BLIS
Mr McConnell - BLIS

INTERGOVERNMENTAL CONFERENCE - STRATEGY

Purpose of Paper

This paper sets out for discussion at PUS's Anglo-Irish Steering Group meeting on Friday approaches designed to give best effect to our continuing strategy of implementing the Anglo-Irish Agreement in such a way as to further the objectives we share with the Irish of: helping eradicate terrorism; reducing nationalist alienation; and reassuring unionists.

Assumptions

2. The paper assumes that:

(a) it remains desirable, despite a tense political and security situation, to demonstrate that the Agreement is "working" in the run-up to the anniversary on 15 November;

(b) the next meeting of the IC will not be until October;

(c) it is desirable to secure Irish ratification of the ECST without reservation.

* ✓ allow 1st. We are now 17. - We; play & work
basically with 16-17.
- like ECST & T-16-17
Wally & myself - 17.25
if you want to know
I would be glad to do so.

OK
aff. with

Approach to the next IC Meeting

3. Our immediate tactical objective is to use the forthcoming IC meeting to further our strategy. But as well as carrying the Irish with us, it will also be necessary to present any nationalist-orientated measures in such a way as to avoid unionist "melt-down". There is potential conflict here, since the Irish will understandably want to claim the most for their own contribution to whatever nationalist-oriented measures emerge.

4. To minimise these risks our approach would be that:

- (a) in general, measures should not be expressly connected with the Agreement (or Conference); but
- (b) it is equally inadvisable to identify some measures as not being connected with the Conference (a point we made about EESG presentation);
- (c) avoiding either pitfall by not announcing any measure at, or immediately following Conference meetings;
- (d) seeking to agree our approach both in general and particular with the Irish through the Secretariat.

The Run-up to the Next Conference

6. Enough measures are in the pipeline, to help create a favourable atmosphere at the next Conference. These include proposals for reform of the Police Complaints (24 July); the Report on Employment Equality (16 September) and the Agreement setting up the International Fund (18 September). If the Conference is delayed sufficiently into October, it may also be possible to have announced

proposals for a Public Order Order (including the repeal of the Flags and Emblems Act). The Irish also now know that statistics are available on the accompaniment by the RUC of army patrols, and we may be able to hand some over at the next IC. The Secretary of State will in addition have reaffirmed his commitment to the Agreement at the BIA.

7. However, although the Irish have a strong interest in demonstrating the success of the Agreement, it seems unlikely that they will regard such measures as sufficient inducement to introduce legislation permitting their ratification of the ECST without reservation. They have made more than clear that publication of an Irish Bill on 10 October depends on our having decided, in principle, to introduce three-judge courts. While there may be some bluff in their representations, it remains the case that unless we do accept substantial reforms in the administration of justice, we will have done nothing of substance under Article 8 or Article 7(c) (apart from providing a few statistics) to balance whatever gains we have achieved under Article 9. This trade-off is at the heart of the Anglo-Irish bargain, and reflected in paragraph 7 of the Hillsborough communique. While failure of the Irish to ratify might have little effect on the readiness of Irish courts to return fugitive terrorists, it would certainly not make it easier. Moreover, and following recent mishaps over extradition in the Republic, failure to ratify which was due to the unwillingness of the Irish Government to commit themselves would be immediately exploited by opponents of the Agreement to call into question Irish good faith generally, and make it much harder for us to press ahead with measures of particular interest to the minority which were desirable on their own account. (It cannot be excluded that the Irish Government will be unable to deliver ratification, and may even fall in the process. But while this would create difficulties in the short run, unless -and until - we established an understanding with the successor Government, it would not be presentationally so harmful as for the current administration not even to try and introduce the necessary legislation.) This legislation is, we understand (Mr Elliott's minute of 16 September to PS/PUS) now ready to be introduced. The Irish Secretariat believe it could pass through all the necessary stages by

Christmas. If so, we would harvest one of the most widely anticipated fruits of the Agreement - and one of particular interest to unionists.

8. The application of these general consideration to individual possible agenda items is discussed below.

The Administration of Justice

9. The Secretary of State has now written to the Prime Minister proposing our commitment to the principle of 3-judge courts in the context of a general loosening up of the Diplock Court system. By the next IC, Ministers will either have agreed, or they will not. If the former, the Irish Government will almost certainly lay their ratification Bill before the Dail; we shall have demonstrated our readiness to keep our side of the Hillsborough bargain - and by a measure which, although it demonstrates Irish political influence, nevertheless does not damage either in real or in symbolic terms any unionist interest, and for which there is, in the latest report from the SACHR, a respectable, independent case.

10. If the latter, however, this will either be because no decision has been taken, or because the answer is "no". In either case, but especially the second, it will then be incumbent upon us to ensure that we were able to offer, before the Conference, as many nationalist oriented measures as possible; nor would we then be able to 'save up' any announcements to keep up momentum later in the autumn.

11. The longer, however, the Conference is postponed, the harder it would be at the IC to say that no decision had been reached. Hence if at all possible, we need a Ministerial decision by the earliest possible date; either the result will gladden the Irish, or we shall have longer to plan a damage limitation exercise in which our handling of the following agenda items will become of critical importance.

Bill of Rights

12. The Secretary of State has now agreed that we should respond to Irish pressure for a Bill of Rights for Northern Ireland by floating with them the idea of a joint document describing the safeguards both in the North and in the Republic and, if the Irish are not attracted to that idea, indicate that we would unilaterally produce a document in respect of the North.

13. However, if Ministers decided against 3-man courts, we may expect renewed Irish pressure for something more substantial - or need to volunteer it ourselves. If so, the time would perhaps have come to assess the merits of a Bill of Rights for Northern Ireland as opposed to the technical problems inherent in such legislation.

Irish Language

14. Miss Elliott will shortly be circulating a submission recording considerable progress in measures to enhance the status of Irish, and seeking the Secretary of State's agreement inter alia to the following:

- (a) the acceptance of Irish as well as English forms of personal and place names;
- (b) the employment, subject to conditions to be determined, of some dual language street names.

15. There is much in our current proposals from which the Irish (and nationalists) ought to be able to derive modest satisfaction (although we have not been able to meet them on all points). If we can say nothing about three-judge courts, then we shall have to make the most of our present plans in this area. If, however, we are, then a better approach might be for the next communique simply to record that measures to enhance the Irish language were discussed, but we could keep a detailed announcement of our specific plans for later in the autumn.

Public Order Order

16. The Secretary of State has now agreed to a new Order with three main elements: tighter control of marches; widening the scope of incitement to hate legislation; and repealing the Flags and Emblems Act. The symbolic (and accordingly the presentational difficulties) inherent in the last proposal should not be underestimated. If we are ^wable to meet the Irish on 3-judge courts, it seems essential that we have published our proposal for this particular Order before the next Conference.

17. LOB's original plan was to publish the draft Order for consultation on 1 October. This no longer seems possible, but a publication date in early October is still hoped for. Since it is manifestly undesirable for such an announcement to be made at or shortly after a Conference, it would be both in our own and Irish interest to postpone a meeting until after publication date.

I Voters

18. CPL have reported that, assuming no major hitches but not cutting corners, it will be possible to produce an Order ready for the Secretary of State to make in the week beginning 6 October. The easiest acceleration of this timetable will be to pay for a quicker turnaround by the printers, offering a date for the making of the Order in the second half of the week beginning 29 September.

19. For the reasons set out in paragraph 4 above, it would be wrong to make the Order on the day of an IC, and ideally the Order would have been made before the Conference (thus making a further contribution to a successful encounter). However, the value of this Order, in Anglo-Irish terms, has already been reduced by its having already been firmly announced. If we believe that the Irish were committed to introducing ECST legislation, then it would not matter unduly if the Order were not made until after the Conference. If, however, we cannot offer anything on 3-judge courts, then all

efforts should be made to make even this Order at the earliest possible date, even at slightly greater expense.

RUC

20. Progress under Article 7(c) is at the heart of the Agreement from both a nationalist and an Irish point of view. It is, therefore, encouraging that the RUC have made some progress in producing statistics on RUC accompaniment of army patrols - even though they do not yet distinguish between patrols which are planned to come into contact with the public, and others. It thus remains unclear what exactly the current figures tell us; whether the Irish would regard the position as satisfactory; and, therefore, whether it would be sensible to hand over figures to the Irish at the next Conference, especially since they are likely to want to make public use of them. Even if we made it an express condition of giving them any new figures that they would not publish them or quote them publicly, it would not be surprising if they were leaked. An essential preliminary, before final decisions are taken, seems to clarify what exactly the figures show - which may not prove easy given the Chief Constable's absence on leave until 13 October.

21. The Irish are, however, unlikely to be fully satisfied until the RUC Code of Conduct to which the RUC were committed in the communique of 11 December 1985 is issued. A draft is apparently with the Police Federation. There can surely be no excuse for further delay.

Our Demands of the Irish

22. The more of the above measures we can deliver before the Conference, the stronger is our case not merely for inducing the Irish to ratify the ECST (if they can) but also to press them hard in the following areas which also should feature on the agenda:

(a) Cross border security cooperation. In the short term, we need to remedy the kinds of defects identified by Mr Scott in his recent tour of RUC border districts. This may be difficult unless the Chief Constable provides us with the necessary information to make our case through the IC machinery. In the longer term, we need to bring the standards of the Garda anti-terrorist effort, particularly in the fields of intelligence and surveillance, up to those of the RUC. More immediately, however, we need to secure the full implementation of the agreed reports prepared by the two forces. Mr Stephens or Mr Innes will no doubt wish to expand on how the IC machinery can be exploited to these ends; and

(b) Nominations for PANI which are still awaited, although with increasingly less excuse, from the SDLP.

23. Belfast colleagues may also wish to comment on what pressure, if any, we might usefully seek the Irish to apply to the SDLP. As a minimum, the SDLP might be reminded to take care to avoid remarks about eg the repeal of the Flags and Emblems Act which unionists can too easily interpret as "triumphalist".

24. Although not all are likely to emerge in IC discussions the following issues and events may colour the background against which decisions on Conference related matters are taken:

(a) publication of DHSS proposals on liquor licensing including Sunday opening. At present, mid-October seems the most likely date. There seems no reason, on Anglo-Irish grounds, to delay publication substantially, however, although in taking their decision Ministers should be aware that the wider context could enable a more baleful significance to be read into this otherwise modestly reform; and

(b) the possible announcement by Harland and Wolff of a programme of redundancies. Fortunately, however, the company has not yet apparently agreed a forward programme mainly because of slippage on other contracts. Moreover, the number

of redundancies is likely to be smaller than feared earlier, and the first notifications are apparently now unlikely before December/January;

(c) the outcome of Stalker/Sampson; and

(d) the the trial of Mr Robinson in Ballybay in the first week of October (unless postponed).

25. Other issues at the IC might include economic and social measures (Newry/Dundalk Road; tourism; canals; pollution) or even NICS nationality regulations.

Summary and Conclusions

26. We should press on with a programme of nationalist-oriented measures designed to demonstrate our continuing commitment to the Anglo-Irish Agreement, and that the Anglo-Irish Agreement is working. Particular care will, however, be necessary to ensure that such measures are presented in such a way as neither to intensify unionist opposition to the Agreement, nor to antagonise the Irish (and Northern nationalists).

27. We have in hand a number of measures which are likely to find favour both with the Irish and nationalists, but in order to secure the wholehearted support of the former, and, in particular, to guarantee the introduction into the Dail of legislation permitting the ratification with reservation of the ECST, it will almost certainly be necessary to make a commitment to the introduction of 3-judge courts. With such an announcement, coupled with other measures already planned, we will be on target for a successful Conference meeting in early October that would further our general AI strategy. Without that commitment, however, that legislation will be harder, if not impossible, to secure, and the credibility of the Irish Government's commitment to eradicate terrorism will be questioned - in the North. The less we can offer under Articles 8 (& 7(c)) the more we shall have to make of other measures described above.

28. At best, however, we might be in a position to invite the Conference to bless a programme for the autumn with the following ingredients: a commitment to three-judge courts; the Public Order Order; a declaration on human rights; progress on the Irish language; correction of the I voters anomaly; and, possibly the provision of information on the RUC accompaniment of army patrols. The Conference itself should be so timed as to permit the largest possible list.

29. The next step, subject to the views of the Steering Committee, would be to prepare a shorter submission for the Secretary of State outlining what we hoped to get out of the next meeting of the Conference with pointers forward into the autumn.



P N BELL
SIL

18 September 1986

EM.