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SECRETARY OF STATE
FOR
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18 September 1987

Don Willie

You will recall that last year (H(86)21st) I was given approval in principle to proceed with the publication of a consultative paper examining possible ways of dealing with supporters of terrorism who sit as local councillors in Northern Ireland. I was asked subsequently to consult senior colleagues on the timing of publication, and have in fact now twice deferred issuing the paper (once because of the Irish elections in February and once for our own).

With your agreement, I would now propose to publish the consultative paper on 6 October, just after my return from the United States. The consultative paper, a copy of which I enclose, has been subject to some minor editorial revision, partly to reflect the lapse of time since it was first drafted. We have made no changes of substance, other than to refer to the passing of the Public Order (Northern Ireland) Order (since the draft paper was prepared).

I am copying this letter to Geoffrey Howe.

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hcc: PS/SofS (B&L)
PS/Mr Stanley (B&L)
PS/Mr Needham (B&L)
PS/Dr Mawhinney (B&L)
PS/PUS (B&L)
① PS/Sir K Bloomfield
Mr Burns ②
Mr A Stephens
Mr Barry, DOE
Mr Chesterton
Mr Innes
Mr Elliott
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Mr Kirk

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ELECTED REPRESENTATIVES AND THE DEMOCRATIC PROCESS IN NORTHERN IRELAND

Introduction

1. Since the local government general elections of 1985 there has been widespread public concern in Northern Ireland, shared by the Government, over the role and activities of elected representatives whose attitude to terrorist violence appears incompatible with a genuine commitment to constitutional politics. The purpose of this paper is to describe the nature of that concern; to examine briefly the options available in seeking to remove its causes; and to serve as a constructive basis for more detailed consideration of issues which are potentially both controversial and complex.

Background

2. It is a fundamental principle of democracy that people should be free to participate in elections, regardless of their political opinions. But it is clear that any reasonable definition of legitimate political activity must exclude the use or threat of violence against political opponents, or in alleged pursuit of political objectives. A severe challenge to democracy arises when those who will not forswear violence seek to use the electoral process itself with the ultimate aim of undermining democratic institutions. These conditions unfortunately exist in Northern Ireland.

3. A serious threat to stable local democracy in Northern Ireland has come from Sinn Fein, whose candidates make no secret of their support for "the armed struggle" - a euphemism for the terrorist crimes, including murder, carried out by the Provisional IRA. But while Sinn Fein's activities and provocative statements give greatest public offence, other politicians from time to time are also ambivalent about the use of violence for political ends.

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4. It is understandable that the presence in Council Chambers of councillors fully committed to supporting a terrorist campaign should give rise to particular alarm. In the case of Sinn Fein, their councillors support their party's "military wing" which has been responsible for a number of assassinations of elected representatives, in Northern Ireland and in Great Britain; and prominent Sinn Fein Councillors have sought to justify the IRA's terrorist campaign, even were that to include the murder of individuals employed by their own Councils. In these circumstances, and in any others where councillors may make clear their support for terrorism, it is natural for other Council members to fear that information gleaned by such activists in the course of their elective duties might be made available to terrorist organisers. Similar considerations would apply to other elected bodies in Northern Ireland - such as a future Assembly - if members of this kind were present.

5. Some Councils have attempted to solve these problems by themselves. A number of procedural devices have been tried in order to exclude Sinn Fein members from Council business. These have been challenged in the courts, resulting to date in three Court judgements rejecting the legality of the actions of the Councils concerned. But the judgements drew attention to the close relationship between the political activities of Sinn Fein and the murders and other violent crimes committed by the IRA to overthrow democratic government in Northern Ireland. The Government has held a series of meetings with Northern Ireland Councillors and party delegations to explore views on what might be done. Against this background, the Government has examined a number of possible ways of giving effect to the widely held view that those who condone or support terrorist violence should not be permitted to exploit democratic institutions. At the same time, the Government is concerned to ensure that any measures adopted should not inhibit the legitimate expression of political views nor conflict with the principles of free elections and elective representation.

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6. One measure which has already been taken, following a review of public order legislation in Northern Ireland in the light of the Public Order Act 1986, is the strengthening of the legislation on incitement to hatred or the arousal of fear. The Public Order (Northern Ireland) Order 1987, which came into effect in April, created certain new offences such as the publication or distribution of threatening, abusive or insulting material and the use of threatening, abusive or insulting words or gestures - not only if they are intended to stir up hatred or arouse fear on racial or religious grounds but also if, in all the circumstances, such hatred or fear is likely to be stirred up or aroused. It is intended that this legislation should moderate some of the more extreme rhetoric of the political debate in Northern Ireland.

Options

7. A range of other measures has also been considered. These reflect a wide variety of perceptions of the problem, and thus of approaches towards its resolution.

8. Proscription: banning Sinn Fein, or any other group that endorses the use of violence, presents problems of principle and practicality. Proscription is used against organisations which are actively engaged in the commission of criminal terrorist acts. The distinction between them and extremist political groups is the actual use of violence. Sometimes the dividing line is difficult to draw. Proscription of such groups cannot be ruled out, but such action, in this context, would go beyond the scope of the specific concern to deal with the presence on elected bodies of those who reject the democratic process. This was recognised in discussion with Ministers by a number of delegations otherwise disposed to proscription.

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9. Oath of Allegiance: some delegations proposed the re-introduction of a declaration similar to that in force until repealed in April 1973, which required Councillors to "render true and faithful allegiance and service to Her Majesty Queen Elizabeth II, her heirs and successors according to law and to Her Government of Northern Ireland". A declaration of this nature, however, could not be readily enforced, nor does it bear directly on attitudes towards violence. Moreover an oath continues to appear inappropriate to local government. There is no such requirement anywhere else in the United Kingdom.
10. Extended Disqualification: under existing law, a person cannot be elected to a District Council if he has within five years preceding election day been sentenced to a term of three months or more imprisonment. It is for consideration whether this five year period should be increased.
11. A Declaration as a Condition of Elected Office: variants of this approach are considered in the remainder of this paper. It seems to offer the most practical and acceptable means of protecting democracy in Northern Ireland's elected institutions from the threat of those who support criminal violence for political ends. The Government believes that there would be widespread support for the proposition that elected representatives, irrespective of their political viewpoint, should sign a declaration unequivocally abjuring the methods of terrorist organisations in furthering their cause.
12. Before this approach could be adopted, however, a number of practical issues would need to be resolved. The main questions for decision would include the wording of a declaration of non-violence; the stage in the electoral process at which the declaration should apply; and the appropriate mode of enforcement, which might be civil or criminal. Legislation would be required to provide for both the declaration itself and the enforcement procedures.

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13. The precise wording of any declaration would require careful consideration. It should not be so narrow as to be readily side-stepped. But nor should it be so wide as to be impossible to enforce or to catch legitimate expressions of political opinion. An appropriate formulation might be along the following lines:

"I declare and undertake that if elected, I will neither support nor assist the activities of any organisation proscribed by law in Northern Ireland".

14. A declaration could be required at either of two stages in the electoral process. If required at the stage of candidature, it would introduce an additional qualification before a person could stand for election. The Government would not normally welcome an additional limitation on the right to stand. That consideration must, however, be weighed against the disadvantages of requiring the declaration from a candidate after he has been elected. At this later stage, the effect of disqualification for refusing to make a declaration is felt both by the candidate and those who voted for him. It would not necessarily be clear in advance which candidates might make themselves liable to disqualification if elected; the resulting uncertainty and confusion, together with the inevitable allegations of mass disfranchisement, could undermine the integrity of the electoral process; and there would be the danger of an indefinite series of by-elections if a refusal to sign the declaration were followed by the election of further candidates who similarly refused. For this reason it seems more appropriate for any procedure requiring a declaration to apply at the stage of candidature.

15. Enforcement of a declaration could either be through the criminal or the civil courts. Breach of a declaration could be made a criminal offence, conviction for which would result in electoral disqualification (as well as imprisonment or a fine).

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The question for the courts to determine would effectively be whether the words or actions of an elected representative amounted to a breach of the declaration. The offence could not be committed by any person other than an elected representative.

16. Alternatively, the enforcement procedure might operate through the civil courts. Legislation would be passed to enable any individual to bring an action in the High Court seeking the disqualification of an elected representative for breach of the declaration. No issue of criminal liability would arise under this alternative. In either method of enforcement the issue at stake would be the breach of the declaration rather than the beliefs of the person concerned.

Conclusion

17. The call for effective action against those who use the democratic process in order only to undermine it has been voiced strongly and widely in Northern Ireland. It reflects deep public concern. The Government accepts its responsibility to safeguard local democracy and to seek to prevent the deliberate destabilisation of political life in the Province by apologists for violence. To this end, the Government believes that the requirement of a declaration, as set out in paragraph 13 above, from candidates for election to District Councils and the Assembly would be the most direct and productive means of protecting constitutional politics compatible with established democratic principles. However, before reaching a conclusion, the Government would welcome the views of the constitutional political parties, and of other interested organisations and individuals, on the issues discussed in this paper and, in particular, on the proposed declaration. Comments should be sent, by 30 November 1987, to The Secretary, Northern Ireland Office, Stormont Castle, Belfast BT4 3ST.

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