

3. There is no disputing the malign influence of Sinn Fein on the political scene in Northern Ireland nor the danger to the constitutional, democratic resolution of problems posed by the way in which spokesmen freely use the broadcasting and press media and the public platform to express support for proscribed organisations and the use of violence for political ends in the island of Ireland. Public statements of support for PIRA activities by Sinn Fein spokesmen foster more acts of terrorism because the support of elected representatives tends to "legitimise" PIRA's terrorist acts as the acts of "freedom fighters", not only internally but also internationally; and such statements - made openly and loudly - boost the terrorists' morale and determination, particularly since Sinn Fein spokesmen can claim that they have the support of at least 10% of the electorate. Furthermore, and importantly, the propaganda effect of such statements substantially increases the effectiveness of individual PIRA attacks in raising the level of terror and tension in the community: and they may also be used (as is the case in the current PIRA campaign of intimidation) to amplify and reinforce terrorist tactics.

4. It is also argued that action against Sinn Fein would please the unionists at a time when they need pleasing, and that, in particular, action directed at Sinn Fein members of local councils would be helpful in persuading unionists to withdraw from their boycott of council activities. (But, although the boycott had its origins in aversion to Sinn Fein, it must be debatable, now that the boycott has drawn strength from opposition to the Anglo-Irish Agreement, how far the removal of the Sinn Fein Councillors would make any immediate difference to the unionist policy). Nevertheless there can be little doubt that the Government's failure to take steps to clip Sinn Fein's wings has been a major factor - pre-dating the Anglo-Irish Agreement - in undermining the unionist community's confidence in the Government's will to defeat terrorism, and in Government's will to defeat terrorism, and in Government policy generally.

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5. Both the moral and pragmatic arguments have cogency. But in considering what action may be possible it is important to have two considerations in mind:

- a. For good reason the Government rules out direct action against Sinn Fein in the form of proscription or internment of its leaders. Nor, despite the conclusive intelligence already mentioned, does it prove possible in most cases to bring home criminal offences of membership of a proscribed organisation. The judicial evidence is not there. The pressure to find some indirect means of getting at Sinn Fein is a reflection of these realities, and if it is acted on will inevitably highlight them. This makes it all the more important that any oblique method should be, and be seen to be, effective. Of course, the Government might obtain short-term credit by being seen to do something but its credibility could suffer in the longer run if the action taken failed to hit the target.
- b. The sort of measures we are examining would not be confined to Sinn Fein or to nationlist extremists in general; "loyalists" could fall foul of them. If one objective is to satisfy unionist feelings about Sinn Fein, we should bear in mind that satisfaction at any action taken might evaporate if leaders of, for example the DUP, the UDA, and the Ulster clubs found themselves at the receiving end of new sanctions. But that does not diminish the moral imperative to take action against those who offer support for terrorist organisations or terrorist or sectarian acts.

6. One possibility which remains on the table is to deal with the presence of Sinn Fein members on district councils by introducing some form of "declaration of non-violence" for those wishing to take up elected office. The Secretary of

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State will be familiar with the background to this but a short summary of previous consideration that has been given to taking measures against Sinn Fein is attached at Annex A. The Secretary of State may also wish to read the attached report of the Working Party on Further Measures to Curb Terrorism chaired by Mr Brennan which reported in 1984 and which exhaustively considered the issues dealt with in this submission.

7. Other than the "declaration", the front-running possibility is the creation of a new criminal offence which (in some way yet to be defined) would be committed by those who gave verbal support to terrorist organisations or terrorist or sectarian acts. Although in 1984 Ministers concluded, after considering Mr Brennan's Report, that no action to create a new offence should be taken, the balance of the arguments may now have changed and in order to test that, the remainder of this submission discusses the present advantages and disadvantages of such an offence as described above.

The New Offence

8. The democratic argument in favour of creating a new offence which in its effects falls short of proscription is that the Government is seeking to prescribe a framework which encourages all political parties to conduct lawful constitutional debate but which constrains the public statements of those using the constitutional process to subvert democratic institutions by endorsing the use of physical violence for political ends. Total success is impossible, no legislation could entirely prevent expressions of support for violence being made in coded language but it is nonetheless desirable, if possible, to erect barriers to the ability to give explicit support for violence.

9. The pressure on the Government to do something about Sinn Fein and similar organisations does not diminish the difficulty of drafting a politically acceptable offence that would be effective. The introduction of legislation which appeared to

interfere with rights of free speech might arouse strong opposition in Parliament from civil libertarians without effectively reducing the ability of Sinn Fein or other extremists to indicate support for terrorism. We also understand from our Legal Adviser that there would be strong opposition from the Attorney-General and the Home Secretary to any proposal to include in the Emergency Provisions Bill an offence of expressing support for a proscribed organisation. The Home Secretary's view is based, we understand, on the grounds that it would lead to pressure, which it would be difficult to resist, to extend it to Great Britain. The Secretary of State may consider that the Government could nevertheless justify confining such a new offence to Northern Ireland on the grounds that it was an emergency provision to deal with a uniquely difficult security and political situation currently existing in Northern Ireland alone.

10. There are the problems of deciding whether a new offence should apply to the media ie to the reporters of statements. If it did not, the offending statements could still be widely disseminated. There would be evidential problems over newspaper reports of statements and, in any case, many reputable newspapers often quote terrorist spokesmen directly in order to illustrate repugnance. However, editorial expressions of support are a different matter and might well fall within the scope of a new offence. The Legal Advisers, however, warn that devising a test to distinguish between the reporting of facts and the expression of editorial support would be very difficult. The broadcasting media could, of course, provide direct evidence of statements breaching any new provisions, and would provide opportunities for interviewers to press extremist spokesmen towards committing the offence.

11. The most serious political danger arising from seeking to introduce a new offence would be that it would raise public expectations that, finally, something effective was being done against Sinn Fein and their like. If, in the event, there was

no significant result in terms of prosecutions, the extremists could claim to have gained a further victory in terms of the inability of democratic governments to deal effectively with terrorists and their supporters. This is precisely the danger that was identified in considering whether to introduce a declaration of non-violence for candidates for local elections. On the other hand positive government action to introduce a new offence could be politically advantageous, at least in the short term, and even if it failed to achieve a large number of prosecutions that would not necessarily mean the measure was ineffective if it made the supporters of terrorism choose their words more carefully, particularly on the broadcasting media and in council chambers. It would, therefore, be important in proposing a new offence to avoid overstating its probable effects, particularly in terms of prosecutions.

12. If, after careful consideration of the arguments and in the knowledge that some Cabinet colleagues would not be easily persuaded, the Secretary of State wishes to explore the feasibility of drafting an appropriate provision then as a minimum, consideration could be given to the third of the options identified by Mr Brennan's Working Group (see Annex A), which would attempt to catch statements of support for a proscribed organisation. That was dismissed at the time on the grounds that it did not go far enough, that it would have little or no practical effect, and that it would raise expectations that could not be fulfilled. These disadvantages remain valid today. Furthermore an offence aimed only at expressions of support for proscribed organisations would highlight the existence of unproscribed loyalist paramilitary organisations - such as the UDA - because it would fail to catch the more general expressions of support for the unlawful use of physical violence for political ends which have been used over the years as much by loyalist extremists as by republican spokesmen. Despite these major disadvantages the Secretary of State may consider that nothing more than a

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minimalist approach along the lines of Mr Brennan's third option would have any chance of securing the support of the majority of Cabinet colleagues and that it would at least demonstrate the Government's willingness to act against those who overtly support proscribed organisations.

13. It would be desirable to go further, but the difficulties mount incrementally with each step that is taken. It would be desirable to inhibit the current freedom of extremist spokesmen from both sides of the community within the island of Ireland to express support for or to incite acts of unlawful physical violence committed for political or sectarian ends, but no one has yet identified a formula which would achieve this without giving rise to difficulties of one sort or another. Ministers need to decide where the balance should be struck and whether, since doing nothing in Northern Ireland has become increasingly difficult to defend, the Government could, by justifying the application of a new emergency provision by the uniquely difficult security and political situation currently existing here, attempt to surmount the difficulties that have been identified. In the light of the current pressures upon the Government within Northern Ireland to deal with Sinn Fein, Ministers may wish to consider whether the arguments for and against taking up the second of the options identified in Mr Brennan's Working Group (see Annex A) are more evenly balanced than they were, and that something along those lines offers a way forward. A survey of statements made by extremist spokesmen from both sides of community over the last two years or so has demonstrated how difficult it would be to catch these spokesmen or their reporters even with a new measure along the lines of the second option. Attached at Annex B are some of the statements that might be caught by such a provision. However, such a provision would be seen to be more even-handed than the third option in that it might curtail some of the public statements of Loyalist extremists as well as some of those of Sinn Fein.

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14. One of the difficulties facing the Government, if Ministers decided to proceed with a new offence, is that we are still some way from the precise drafting of an offence that would be acceptable to the Law Officers or stand up to critical examination in Parliament. It was made clear to Mr Scott at 'L' Committee that any Government amendments to the EP Bill would have to be made at the Commons Committee Stage which will probably begin towards the end of January. We would therefore have to move very quickly indeed to formulate the new offence and consult and win the agreement of Cabinet colleagues to introduce it as an amendment at Committee Stage.

15. If Ministers decide to proceed with a new offence, the Legal Advisers see no difficulty within the scope of the EPA Amendment Bill of introducing a penalty of disqualification from elective office for persons convicted of the offence. This would achieve much the same effect as a declaration of non-violence and might make the need for a declaration redundant. It would be of the same order of effectiveness against Sinn Fein councillors (and possibly in the future, Assemblymen) taking their seats as the new offence would be against expressions of support for the unlawful use of physical violence for political or sectarian ends. The main difficulty in providing for such a penalty would be the anomalous position of a provision which disqualified persons for supporting proscribed organisations or terrorist acts but did not disqualify persons for membership of a proscribed organisation or for committing terrorist acts where they were not convicted for support for a proscribed organisation.

Conclusion

16. It is morally and politically desirable that the Government should take measures against those such as Sinn Fein and loyalist spokesmen who express support for proscribed organisations or for the use of unlawful physical violence for political ends, and against those who stand for election in order to subvert the constitutional democratic process. There

are, however, considerable technical and practical difficulties in the way of taking effective measures without unacceptably restricting the rights to freedom of speech and freedom to report and the right to freedom of choice of elected representatives. Fundamentally, the Secretary of State has three choices.

- a. Do nothing and continue to ride out unionist criticism and seek by other means to reassure the public in general that the Government does have the will to defeat terrorism and all those who seek their political objectives by the use or the threat of the use of unlawful physical violence.
- b. Introduce a narrow new offence of expressing support for a proscribed organisation.

(1) Advantages

Would demonstrate Government's willingness to act against those who overtly support terrorist organisations

Would put extremist spokesmen at risk from probing public questioning

Might lead to the removal of one or two Sinn Fein councillors from District Councils.

Might ease the Government's relations with the unionists.

(2) Disadvantages

Would easily be sidestepped by extremist spokesmen.

Unfulfilled expectations could lead to criticism and increased disrespect for the Government and the law.

Would be perceived to be targetted more against republican extremists than loyalist ones.

Would be difficult to secure the support of the Law Officers and some other Cabinet Colleagues

- c. Introduce a wider new offence of expressing support for proscribed organisations or for the use in the island of Ireland of unlawful physical violence for political or sectarian ends.

(1) Advantages

Would demonstrate the Government's willingness to act against terrorists, those who use sectarian violence and, in both cases, their supporters.

Would put extremist spokesmen at more risk from probing public questioning than the narrower offence.

Would be seen to be an even-handed attack on the extremists on both sides of the community.

Might lead to the removal of some Sinn Fein councillors from District Councils

Might remove a significant degree of provocative language from the political debate in Northern Ireland.

Might, in the long run, make easier the resumption of political dialogue in District Councils.

(2) Disadvantages

Would not prevent the careful use of coded expressions of support for terrorism or sectarian violence.

Would be presented as a serious attack on freedom of speech, possibly freedom to report and freedom to choose elected representatives.

It would be very difficult to win the support of the Law Officers and some other Cabinet colleagues for such a measure especially in the short time available.

Would still lead to unfulfilled expectations which could lead to criticism and increased disrespect for the Government and the law.

17. The balance is finely drawn but if the Secretary of State believes that, for political reasons, doing nothing is no longer acceptable, then the type of new offence which he puts to Cabinet colleagues for their agreement to its introduction as a Government amendment to the EP Bill will depend on his judgement whether he can persuade them to accept that the present extremely difficult security and political situations in Northern Ireland require more widely drawn emergency provisions against expressions of support for terrorists and terrorist or sectarian violence than might be tolerable in a less polarised and less violent society than that in Northern Ireland today.

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18. The Secretary of State is invited to discuss this very difficult issue with other Ministers and officials, including the Legal Adviser before reaching a conclusion. He may also consider that it would be helpful to raise the matter directly with the Law Officers at a stage prior to a final decision



B A BLACKWELL
Law and Order Division

28 November 1986

ANNEXES

A : Background to Measures Against Sinn Fein

B : Statements Supporting the Use of Violence

Attachment (SofS's copy only)

Report of the Working Party on Further Measures to Curb
Terrorism

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MEASURES AGAINST SINN FEIN

Background

1. Sinn Fein was deproscribed together with the UVF by HMG in May 1974 with a view to encouraging the more extreme republican and loyalist elements of Northern Ireland's political spectrum to participate in the Constitutional Convention elections in the hope - which was unfulfilled - that the provision of constitutional democratic means of obtaining redress for perceived injustices and grievances would drain away support for the use of violence in pursuit of political ends.
2. The UVF were subsequently reproscribed but Sinn Fein remained deproscribed and peripheral to the main political arena here until the 1980 and 1981 Hunger Strikes mobilised for the Provisionals a substantial electoral base within the nationalist side of the community. By the time of the 1982 Assembly elections the leadership of PIRA/Sinn Fein were able to build on their base in the nationalist electorate through election by proportional representation in order to gain five seats for Sinn Fein in the NI Assembly on an abstentionist policy, winning just over 10% of the total votes cast.
3. In the UK General Election of 1983, Sinn Fein candidates secured 13.4% of the total vote in Northern Ireland and Gerry Adams was returned as the member for Belfast West. He has not taken his seat at Westminster. The PIRA/Sinn Fein leadership then decided to contest the 1984 European Assembly election believing that they could overhaul the SDLP vote. Their lack of success (taking only 13.3% against 17.9% for the SDLP) did not deter them from contesting the 1985 District Council

elections on the basis that they would take up their Council seats and participate in Council business in the interests of the nationalist community. They won 59 seats - 11.9% of the total vote and an estimated 38% of the nationalist vote. In subsequent by-elections to District Councils, they have held their position against the SDLP. There is no substantive evidence, such as by-election results, to indicate that their support is likely in the foreseeable future to fall below about 30% of the nationalist electorate. For the present, therefore, their policy of the "Armalite and the ballot paper" is likely to remain. Indeed they need to continue with their terrorist campaign to maintain the hard-core republican vote.

The Problem

4. Within the Government considerable effort has been expended into examining what measures could be taken against Sinn Fein which would be both effective and politically acceptable in the wider national and international arenas. The issues were exhaustively examined by a Working Party in 1984 chaired by Mr Brennan which included representatives of the Home Office, the RUC, the prosecuting authorities and the Legal Advisers. The Working Party concluded that it would be technically possible to formulate a new offence in various ways so as to bear upon generalised statements of support for terrorism. In essence the options are as follows:

- a. to introduce a very general provision bearing upon support for terrorism which amounts to condonation;
- b. to introduce a narrower provision focused not upon general support for terrorism but rather upon words used to show active support or some other effort of promotion for terrorist violence; or
- c. to introduce a provision which focused upon statements that denote, whether actively or passively, some support for particular proscribed organisations rather than generalised support for terrorism.

5. The Working Party identified considerable technical and practical difficulties with all of these options which in essence reduced down to an inability to define an effective provision which would not be so wide in its application that it would strike at the heart of the right to freedom of speech and freedom to report. Ministers at that time decided against pursuing a narrow provision which would be likely in practice to prove ineffective against Sinn Fein spokesmen or others whose statements professed support for terrorism or the use of violence for political ends.

6. In the face of the growing disruption of local political dialogue and action caused by the unionist reaction to the presence of Sinn Fein members on district councils, the Secretary of State reconsidered this decision. Discussion with the Law Officers confirmed their view that the difficulty of defining what conduct would come against creating one. The Secretary of State therefore consulted H Committee in July 1986 about a proposal that all candidates at future local government and Assembly elections in Northern Ireland should be required to make a declaration abjuring support for organisations proscribed by law in Northern Ireland. The Secretary of State sought colleagues' endorsement for the need for such a measure and their agreement that, if the right political moment presented itself, he should publish a consultation paper on it. H Committee agreed in principle to publication but because timing would be crucial, the Secretary of State was invited to consult the Prime Minister, Lord President and Foreign Secretary before any final decision was taken to publish. If in due course he wished to introduce the proposed declaration in legislation, it would be necessary to consult the Committee again. In discussion with Mr Needham on 15 July, the Secretary of State decided that the time to act would be when the unionists showed signs of ending their absentionist policy and coming back to the House of Commons.

STATEMENTS SUPPORTING THE USE OF VIOLENCE

Most of the recent reported statements which, in context, appear to condone violence would be unlikely to be caught by a new offence of expressing support for the use of violence because they are phrased to appear to be the speaker's comment or prediction rather than incitement or a direct expression of support; eg

"The IRA are political soldiers who use armed means to resist armed aggression" (Gerry Adams, The Guardian, 22 May 1985).

"I believe the Ulster people, if they have to - and I trust they never will have to - will fight, and if necessary die, to keep the Province out of a United Ireland" - Peter Robinson, 15 October 1986.

2. However, the following statements might be caught:

Sinn Fein elected representatives

"I don't believe the IRA are committing atrocities. Where I live, they are tackling British forces and I believe they have the right to do that" (Jim McAllister, former Assembly member, Belfast Telegraph 9 May 1985).

"The people I am asking to vote for me know that I am unambiguous in my support for the armed struggle and as a member of Sinn Fein I have made no secret of that fact" (Gerry Doherty, Derry City Councillor, Belfast Telegraph 10 May 1985).

"If an employee or member of the council or whatever is a member of the British forces and if he is regarded by the IRA as being a legitimate target then certainly I would have no other option than to accept the fact that the

IRA have every right to do whatever they do." (Seamus Kerr, Chairman, Omagh District Council, Newsletter 7 June 1985).

"These civilians, whether pushing pens or pushing brooms ... are as culpable in their employment practices as they would be if they were directly involved in the manufacture of plastic bullets." (Mitchall McLaughlin, Derry City Councillor, AP/RN 31 July 1986).

"We are a socialist republican movement, a movement that supports the use of armed struggle in the six counties. Our attitude to armed struggle is clear and unambiguous and people can either accept it or reject it, but they cannot deny it the Irish are a subject people who have the right to be free and have the absolute right to oppose in arms the occupying forces of Britain" (Martin McGuinness AP/RN 26 June 1985).

"My position very simply is that the IRA have the right to engage in armed struggle" (Gerry Adams, The Phoenix, 7 June 1985).

"We defend the use of force today against the same enemy and in the same cause as that which made the Easter Rising a necessary and morally correct form of struggle" (Gerry Adams, Irish Times, 31 March 1986).

"Mr Vincent McCaffrey (SF) said there was "no alternative but to use the gun in this part of Ireland" because people were not allowed to express themselves peacefully" (Newsletter report of Fermanagh Council meeting, 16.5.86).

"Tommy Carroll, SF Armagh Councillor said "those who helped the "forces of repression" in Ireland should desist in the face of warnings" (Belfast Telegraph 24 June 1956)

"I support the IRA in their struggle for Irish freedom" (Geraldine Ritchie, Down District Council, Belfast Telegraph 19 August 1986).

Loyalists

Many of the Loyalist statements are couched in vague terms of 'organisation' or 'resistance', which could be taken to imply support either for violence or for civil disobedience or political activity. The more outspoken remarks include:

"Rattling desks won't smash Sinn Fein. They won't be smashed within the council chamber or within the law. They will be smashed by shooting them outside the chamber and outside the law". (George Seawright, Sunday World 9 June 1985).

"If the Provisional republican movement declare war on loyalists then they make themselves legitimate targets for the same kind of action ... I have always supported the right of loyalist paramilitaries to attack Republican targets" (Seawright, Newsletter, 28 September 1985).

"We must prepare ourselves to rebel against a Parliament which is prepared to push us down the road to a United Ireland ... Peter Barry is a legitimate target and must be removed from Ulster " Jack McKee 18 June 1986).

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