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FROM: R C MASEFIELD
3 NOVEMBER 1988

RM/3716/88/DR

- cc PS/Secretary of State (B&L)
- PS/Minister of State (B&L)
- PS/PUS (B&L)
- Mr Stephens
- Mr Chesterton
- Mr Miles
- ① Mr Spence
- Mr A P Wilson
- Mr Steele
- Mr Blackwell
- Mr Daniell
- Mr J McConnell
- Mr Hewitt
- Mr Shannon
- Mr Bell

UNDER/ SEC 11/3/11
 10 NOV 1988
 CENT SEC

my name

2) M Wilson 11/11

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Mr Burns

COMMENTS BY THE IRISH SIDE ON THE BRITISH PAPER ON CONFIDENCE ISSUES

I circulated in haste to some copy recipients immediately prior to yesterday's Conference meeting the attached Irish commentary on the draft British joint report to Ministers on Confidence Issues.

2. The purpose of this note is now to circulate it formally to all those who have an interest in the subject.

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Comments by the Irish side on the British Paper entitled:
"Report to Ministers on Confidence Issues"

General

1. The Intergovernmental Conference, at its meeting on 25 March 1988, decided to give new impetus to its work on a programme of special measures designed to improve relations between the security forces and the community in Northern Ireland and to help build confidence in the administration of justice. That "new impetus" was agreed in the wake of a series of events (notably the Attorney General's decision on foot of the Stalker/Sampson report and the decision to release Private Thain after some two years of his life sentence) which had raised intense concern and further seriously damaged public confidence in the administration of justice in Northern Ireland. The Irish side entered these "new impetus" discussions on the basis that this would lead to a renewed dedication by the two Governments to tackle imaginatively the widespread lack of confidence in the administration of justice and to identify practical measures which would be both effective and quickly seen to be so.

2. In the initial official discussions, the Irish side cautioned explicitly that expectations had been aroused by the Agreement and the Hillsborough Communique which, regrettably, had not been met by subsequent British Government action. One of the more important dimensions of the present discussions, therefore, has to be to ensure that an already disillusioned public is not made more so by an obvious lack of progress from this "new impetus". The Irish side greatly regret, therefore, that the measures outlined in the British paper do not constitute a programme of special measures which could in any way respond to those expectations nor could they, objectively, be submitted for consideration to Ministers as a serious attempt to meet them.

3. The Irish side were encouraged by the initial analysis of the problem of confidence as set out by the British side last April. That initial analysis, with which the Irish side largely agreed, pointed out inter alia:
 - (a) that nationalists in Northern Ireland saw the security forces, the legal system and the prison system as overwhelmingly representative of the other tradition and agents of a system hostile to nationalist aspirations;

- (b) that even the lack of confidence in the strongly republican part of the nationalist community could be mitigated if the administration of justice, and those who implement it, were widely perceived to be fair, which they are not;
 - (c) that the major reason for lack of confidence in the administration of justice was the style and effect of policing by the RUC and the Army/UDR, especially in nationalist working class areas;
 - (d) that there was no confidence in the handling of complaints against the security forces, that complaints were seen, especially in working class areas, as a waste of time and that redress against the use of unreasonable force by the security forces was simply not available; and
 - (e) that the RUC were seen as over-aggressive and provocative, essentially conditioned and equipped to deal with terrorism rather than ordinary crime and to act as a group rather than individual constables, that they were incapable of differentiating between acts of terrorism and acts of petty crime; and that they abused their powers under emergency legislation and were given especially to harassing young people in circumstances where there could be no reasonable suspicion of involvement in terrorism.
4. The Irish side would have hoped for a sustained development of that analysis in the recent British paper, with appropriate conclusions and recommendations; regrettably, such an approach is not to be found there.
5. There is, moreover, an underlying theme in the paper which the Irish side is obliged to reject. The paper sees the problem of confidence as largely, if not almost entirely, a matter of perception. It seems to consider that if public relations - that is, the presentation of the police, the Army/UDR, court proceedings and the prison system to the public - were improved, and if the statements of both Governments and community spokesmen in the North (in practice, the Irish Government and nationalist spokesmen) were less critical, then public confidence would improve. The Irish side cannot accept that the problem of confidence in the administration of justice is largely a matter of false or wrong-headed perceptions of the police and other elements in the system.

6. The level of public confidence is directly related to the policies pursued by the authorities and to decisions taken by them in pursuit of these policies. Confidence in the administration of justice must be adversely affected by, for example, the Attorney General's decision not to prosecute on foot of the Stalker/Sampson report and the decision recently announced, without prior consultation within Northern Ireland (or with the Irish Government), to make major modifications to the right of silence.
7. Most importantly, the level of public confidence is related directly to the practical experience of people in their everyday encounters with the security forces. Measures need to be taken urgently not just to show willingness to improve these relations but to remove or reduce the objective casues of the widespread view that the security forces engage in conduct which is well beyond, or completely unrelated to, reasonable security measures. - in other words, harassment.
8. It is a recurring theme in the British paper that a proportion of the nationalist community "for ideological reasons will never have any confidence in any institutions in Northern Ireland which they perceive as anything other than Irish" (par 3) and are prone to allegations which need to be treated with caution (par B1). Such difficutlies can of course exist in some cases. But they certainly should not be used to justify in any way a failure or a reluctance to take on the task of trying to create and build up confidence.
9. Over-simplification of nationalist reactions to the security forces has a history in Northern Ireland. We do not accept the concept of a significant irreducible core of opposition to the security forces which is incapable of being affected by the quality of security force actions. Even if it were accepted that a small element of this kind exists and cannot be reduced, it could all too easily be increased. We are also concerned that an emphasis on ideological hostility could be misinterpreted as a signal to the security forces that they might be justified in taking a dismissive attitude to complaints from strongly nationalist areas - precisely the areas where the problem is most acute.

1. Another source of concern is the manner in which the confidence issue is treated merely as an aspect of more effective security operations. The confidence issue is, of course, of great importance in determining the difficulty or otherwise of security endeavours, but its inclusion in Articles 7(c) and 8 of the Agreement reflected above all its wider importance as a political factor in the Northern Ireland situation. It should not, and cannot, be seen as a mere adjunct of security operations, or as a residual exercise. It is a major goal to be pursued in its own right as a means of attacking the vicious circle where the absence of confidence in the security forces and the absence of political consensus reinforce each other for the worse.

Confidence in the RUC (Paragraphs 4 and A1-5 of the British Paper)

11. The Irish side agree that the better protection afforded to Catholic areas during the marching season, and the progress towards impartial operation of the law on marches, has helped encourage greater confidence in the RUC in the nationalist community. That encouraging development has to be set, however, against the severe blow to confidence in the RUC caused by the Stalker/Sampson affair. The decisions and pronouncements of the courts in 1984, followed by the inquiry upon inquiry, the decision of the Attorney General not to prosecute and the continuing saga of disciplinary action six years after the Armagh shootings of 1982, continue to reverberate in the nationalist community. Nor can it be said that there has been any overall marked improvement in regard to harassment or to policing of ordinary crime in West Belfast and certain other nationalist areas.
12. It is an exaggeration to say that the Irish side welcomed the initiative of the Police Authority in bringing forward fresh proposals for liaison committees. We doubt in the first place that the basing of liaison committees on district council areas is the most likely way to make progress in the face of the continuing disruption by Unionists in some councils. More success might be obtained by basing the committees on RUC divisions and placing the onus on the RUC commander, in consultation with the Authority or a designated member, to seek an appropriately/representative committee. More importantly, however, a formal committee system may work well in heavily loyalist areas but it is,

in our view, less likely at present to work in nationalist areas. The police and the Army will have to show by their actions that a basic change in their day-to-day approach has occurred before widespread participation in formal liaison committees is likely.

13. The Irish side see merit in certain of the changes brought in under the NI (Emergency Provisions) Act 1987 - in particular the requirement of reasonable suspicion for arrest - but repeat their view that the case for a statutory code of practice for the operation of the powers contained in emergency, as well as ordinary criminal, legislation is compelling.
14. The Irish side welcomed the promulgation of the RUC Code of Conduct but note again that the long delay and shyness of publicity have robbed this measure of real effect. We would again urge much greater publicity for the Code. This might, for instance, be done in the context of the introduction of the PACE legislation.
15. The record of the Police Complaints Board is such as to encourage few expectations that the new Independent Police Complaints Commission will be any better. The absence from the Commission of any person with known nationalist views has contributed to that feeling. We repeat our view that the Commission will not command confidence unless it can be seen to conduct its own independent investigation in the most serious cases.

The ARMY/UDR (Paragraphs B1-3 of the British Paper)

16. The deployment of certain regiments and the use of very young and immature soldiers is a cause of serious and continuing criticism. In this regard, we would again urge a review of Army personnel and training policies and practices with a view to securing better relations with the community in Northern Ireland.
17. The Irish side stated in their paper on the harassment problem that the UDR are regarded by the majority of the nationalist community as irreformable. Nationalists have a deep fear of the UDR which is based on its local, sectarian composition and its record of crime and indiscipline. We have also been most deeply concerned for a long time about the clear failure to operate the formal commitment to the principle

that all Army, but most especially UDR, patrols should be accompanied by the RUC. We cannot accept the further qualification in the British paper (para B2) that accompaniment will occur "wherever operational circumstances and resources permit". This is a major credibility issue for the Agreement and of the British Government's commitment to it.

18. The Irish side wish to emphasise that the complaints they raise about the conduct of the Army/UDR are not raised without prior consideration of their reliability. No allegation is taken at face value. We particularly regret, therefore, that the response rate to date has been extremely poor. About half of the complaints raised this year have, for instance, gone unanswered and action or the promise of it has been communicated in less than 10% of complaints raised. The response rate to complaints of unaccompanied patrols is as low as 20%.
19. There is moreover a widespread perception that lodging a complaint against the security forces may not only fail to secure redress but may actually draw a vengeful response from the security forces in the form of subsequent searches, delays or other inconveniences. These perceptions need to be changed urgently. It is of the utmost importance that an effective and prompt response system be established urgently to deal with grievances against the security forces.

Legislation (Paragraphs C1-4 of the British Paper)

20. The Irish side consider that there is a compelling case for a statutory code for the operation of emergency powers. We note again that emergency powers are covered in the codes of practice introduced for England and Wales and we propose that a code for the operation of emergency legislation in Northern Ireland be promulgated under an existing power in the forthcoming PTA bill. The case for a statutory code seems to us to have been strengthened by the major qualifications to the right of silence now laid before the British Parliament. The British proposal to introduce a non-statutory guide is welcome insofar as it provides information to the public on the limits of the powers operated by the security forces but it is not of itself a satisfactory measure and it again illustrates the inferior protection provided in law to the citizen in Northern Ireland compared to the protection provided in England and Wales.

2 The Irish side are providing comments separately on the draft PACE Order and the non-statutory guide as well as the PTA bill (when we are clearer as to the proposed contents), but we would wish to single out here the importance we attach to video and sound-recording of police interviews in all cases - including arrests under the EPA/PTA - especially now that modification of the right of silence is being made. We see such recording as an important protection for both the police and the public. We also believe that any concern about sensitive security information emerging in the courts could be provided for without undue difficulty.

Northern Ireland Courts (Paragraphs 5 and D1 of British paper)

22. The draft paper argues that the working of Northern Ireland courts is "not a matter of great concern to most Catholics". This assertion is not borne out by the statements of representative nationalist spokespersons. A study by the Policy Studies Institute earlier this year suggested that 21% of Catholics thought the courts treated Catholics "very unfairly" while 38% felt the courts "a bit unfair" or "very unfair" in this respect. This scarcely gives grounds for complacency on the issue. We would urge the immediate reconsideration of the proposal of the Irish Government to have three judges in the Diplock courts; this, in our view, would be a valuable means of reducing the problems, disadvantages and lack of confidence which must inevitably be involved in the absence of jury trial. The case on three judge courts becomes all the stronger in the light of the recently proposed changes in the right of silence.

23. We also believe that many non-terrorist cases are being sent to the Diplock Court and that there is a strong argument for amendment of Schedule 4 of the NI (Emergency Provisions) Act 1978 to remove or qualify offences and to provide for "certifying in" to Diplock rather than "certifying out". The Irish side believe that the scheduled offences should be as few as possible and that the presumption should be in favour of a hearing in the ordinary courts.

24. We would again repeat that a change in the jurors' oath to remove the archaic reference to allegiance to the Monarch (already done in England and Wales) is long overdue and could have a useful effect if properly presented.

Prison System (paragraphs 6 and E1-4 of the British paper)

25. We fully agree that the handling of prisons policy will always be a key factor in promoting confidence in the administration of justice. We would add that it has also special importance for the task of removing support from subversive organisations, both nationalist and loyalist.
26. We would wish to record our appreciation of the decision taken to review special category and SOSP prisoners. We would be concerned, however, if the reviews did not live up to expectations, in particular as regards the SOSPs, and would welcome regular briefing on their progress.

Suggestions on a way forward (Paragraph 8 of the British Paper)

27. The suggestions which were put forward in the Irish paper are all suggestions for action to be taken internally in the British security forces and administration. In the nationalist view, there is a recurring tendency on the part of the British Government to preempt or deflect criticism by the establishment of formal "buffer" institutions or procedures to deal with complaints, liaise with the community etc. In this regard, the record of the old Police Complaints Board which was both slow in its procedure and reluctant to sustain complaints is a salutary example.
28. In summary the Irish paper stated that
 - (a) while we accept that provocation is a factor with the security forces, they should, by virtue of professionalism and training, be capable of far greater restraint;
 - (b) much greater progress was needed to fulfill the British Government's commitment to the policy of accompaniment, especially of the UDR;

the UDR, moreover, should be kept out of sensitive nationalist areas, including access roads to these areas;
 - (c) much greater emphasis was needed in the training of the security forces in matters such as relations with the community and sensitivity to the culture and aspirations of both communities;

- (d) closer attention was required to ordinary policing in nationalist areas; and
 - (e) informal mechanisms should be established which would allow local constitutional political and other representatives, such as the clergy, direct access as a matter of principle to the local police/Army commander.
29. The Irish side have added in discussions with the British side that closer monitoring of complaints and harassment (including the pattern of harassment) is necessary on a coordinated basis. We welcome the establishment of a monitoring group under NIO chairmanship to meet on a monthly basis and we would wish to have the opportunity through the Secretariat to make an effective input into the work of this group and to be briefed in detail after each meeting on its conclusions and recommendations.

Proposals

30. We propose that, at the earliest possible date, the Conference should announce that work on a programme of special measures is continuing but that, in the interim, the British Government will implement some or all of the following measures:
- (a) fundamentally review personnel and training policies and practices for the security forces with a view to helping to secure better relations with the community;
 - (b) renew the commitment to RUC accompaniment of Army/UDR patrols, state that accompaniment has been limited so far due to resource and operational problems, that these problems are being overcome and that it is expected that the RUC will accompany all Army/UDR patrols likely to come in contact with the public within a period of one year;
 - (c) announce the establishment within the Government of new monitoring and controlling mechanisms to deal with the question of harassment by the security forces;

- (d) announce that, without prejudice to the right of people to resort to the courts or the formal complaints machinery, every effort will be made to ensure that informal complaints of harassment will be promptly and fully investigated and that responses will issue to complainants within two weeks;
- (e) encourage the security forces to liaise with local communities either through formal liaison committees or by informal means;
- (f) change the jurors' oath; and
- (g) establish a statutory code for the operation of emergency legislation under the forthcoming PTA bill and, in particular, set out the rights of persons in custody and provide for video and sound recording of all police interviews.

Department of Foreign Affairs

November 1988