

FROM:

D A HILL
ESL DIVISION
13 August 1992

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17 AUG 1992
441/8
17 AUG 1992
CITING

cc: PS/Secretary of State (B)
PS/Mr Mates (L&B, DFP)
PS/Mr Hanley (L&B, DENI)
PS/PUS (L&B)
~~PS/Mr Eell~~
Mr Thomas
Mr Bell
Mr Ledlie
Mr Alston
Mr Steele
Mr Wood (L&B)
Mr Cooke
Mr D J R Hill
Mr Leach
Mr Rickard
Mr Petch
Mr Archer, RID, FCO
HMA Dublin
Mr Caine

MH 360/8

a Mrs Watters

in hand

PS/SECRETARY OF STATE (L)

PROSCRIPTION OF THE UDA

In your second minute to Mr Durbin of 12 August you recorded the Secretary of State's concern at the lack of briefing on Sinn Fein's period of proscription and comments in the Baker Report that there was logic in proscribing the organisation again. I regret that these issues were not previously drawn to the Secretary of State's attention; we had focussed too narrowly on the arguments for and against proscribing the UDA to the neglect of the history of the proscription of Sinn Fein.

Mr McKelbin
Have we available file for these papers

2. When Sinn Fein was removed from the list of proscribed organisations in 1974, the then Labour administration did not ostensibly base their decision on the criterion on which the Secretary of State based his decision to proscribe the UDA. Rather the decision to de-proscribe Sinn Fein was based on an explicit wish to encourage extremists' return to political action. The then Secretary of State (Mr Merlyn Rees) said that in his view there were signs that: "on both extreme wings there are people who, although at one time committed to violence, would now like to find a way back to political activity. It is right to encourage them as much as

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possible". The UVF was de-proscribed at the same time as Sinn Fein but was subsequently re-proscribed on 3 October 1975 in the wake of several murders for which it admitted responsibility. Mr Rees' hope that Sinn Fein would operate as a channel away from violence may now look somewhat optimistic; but it should be borne in mind that the "troubles" were then of much more recent date and return to ordinary political activity even by members of the Provisional IRA looked more realistic. Such a move had indeed been made (more or less) by the Official IRA in 1972.

3. We have not been able to establish at what time the present criterion for proscription was given its present formulation, although we know it is of long standing. We cannot say whether it was in the minds of Ministers in 1974, as well as their wish to encourage the Provisionals to return to ordinary political activity.

4. The attached line to take acknowledges the reasoning of the Labour administration in 1974 but reiterates that the present administration takes its decision on the criterion which has been made public and that Sinn Fein does not meet that criterion.

The Baker Report

5. In chapter 9 of his 1984 report reviewing the operation of the NI (Emergency Provisions) Act 1978, the late Sir George Baker considered the case for proscribing the UDA and Sinn Fein. In regard to Sinn Fein he said 'I make no recommendation about the proscription of Sinn Fein despite incidents in November to December 1987 and subsequent public discussion (Chapter 16 page 146 Conclusion 61, copy attached at Annex B). A list of the November to December incidents is attached at Annex C. In the body of the report he noted that:-

"I had intended to record that there is a logical case for proscribing Sinn Fein. The speeches of Mr Gerard Adams from which I have already quoted show a clear link between Sinn Fein and the PIRA which justified the DUP in saying that "... it is

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clear that bodies such as Sinn Fein are mere support and front organisations for terrorists", or as one newspaper neatly put it Sinn Fein is the IRA in drag.

The Irish Times of the Tuesday following the Harrods bombing (20 December) reporting that the Sinn Fein national director of publicity had declared "It would be an act of vindictiveness for the Irish Government to proscribe Sinn Fein" quoted the view of the Chief Justice of the Republic expressed in the Supreme Court in 1982 that (the Minister) "was dealing with an evil and dangerous organisation whose object was to overthrow the state and its institutions if necessary by force". Another member of the Court had said that Sinn Fein was an integral and dependent part of the apparatus of the Provisional IRA. The logic of course remains, but I have found that logic is often a very unsatisfactory approach when attempting to resolve human problems and, as this question is now squarely one for political decision with international implications and because other measures are also being considered by both British and Irish Governments I do not think I am qualified to or should venture any further observations or make any recommendation on the submissions to proscribe Sinn Fein."

6. The full text of Baker's comments on proscription is attached at Annex D. It was as a result of Baker's comments on those political parties who refuse to renounce violence, and the subsequent public discussion, that in March 1989 the declaration against violence was introduced by means of the Elected Authorities (Northern Ireland) Act 1989.

7. It is not the case that Baker actually recommended the proscription of Sinn Fein. But he did outline a case for the proscription of Sinn Fein based on that organisation's close links with the IRA, and on its aim of overthrowing the institutions of the state in the Republic (and, although Baker does not say as much, in Northern Ireland) "if necessary by force". This case is in turn

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based on statements by the DUP and the Chief Justice. There is an implication in the second statement by the Irish Chief Justice that Sinn Fein itself is involved in violence, but clearly the violence referred to is violence by the IRA. This evidence adduced by Baker scarcely seems sufficient in itself to warrant proscribing Sinn Fein on the basis of the Government's criterion, particularly when taken with his concluding recommendation. In any case Baker is now 8 years' old and it is obviously right that the Secretary of State will wish to base his judgment on more up to date intelligence, which he has done.

8. As for the UDA, Baker adduces a number of reasons why they should not be proscribed (para 420). In particular his fourth reason for not proscribing the UDA does not seem any longer to be valid, since the UDA does seem to have been drawn into a "sectarian war".

9. The attached line to take does not go fully into these arguments, but rather draws attention to Baker's actual recommendation.

SIGNED: D A HILL

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PROSCRIPTION AND DE-PROSCRIPTION OF SINN FEINLi. to Take

1. Sinn Fein was de-proscribed in April 1974. The then Government justified that decision by saying that it would encourage the men of violence to find a way back to political activity.
2. The Government has made clear the criterion which an organisation must meet to be liable to proscription. I have seen no evidence that Sinn Fein meets that stated criterion of being "actively and primarily engaged in the commission of criminal terrorist acts". But the matter is kept under review.
3. If pressed: The Labour party's decision in 1974 was taken in the context of those times, which in many ways were different from those present. I do not believe it would be fruitful to speculate on the wisdom of a decision taken some time ago.

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PROSCRIPTION AND DE-PROSCRIPTION OF SINN FEIN

Background note

- Sinn Fein was originally proscribed by the Government of Northern Ireland in 1956. The ban was continued by subsequent emergency legislation until, in 1974, the then Secretary of State (Mr Merlyn Rees) de-proscribed both the UVF and Sinn Fein in May 1974. He announced his intention in an adjournment debate the month before. (The relevant Hansard extract is attached at Annex A). His argument was (col 1476) that in his view there were signs that "on both extreme wings there are people who, although at one time committed to violence would now like to find a way back to political activity. It is right to encourage them as much as possible". De-proscription of the two organisations was proposed accordingly. The actual motion to approve the Order to deproscribe Sinn Fein and the UVF was subsequently agreed without debate in the House of Commons.

- The UVF was proscribed again on 3 October 1975 in the wake of murders for which it admitted responsibility.

The Baker Report

Line to Take

1. In his report Sir George Baker made no recommendation about proscription of Sinn Fein. He did however acknowledge that the issue was 'squarely one for political decision". That remains the case.

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The Baker ReportBackground Note

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