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SECURITY AND DEVOLUTION

PURPOSE OF PAPER

1. This paper seeks to: (a) identify the main issues concerning security policy and operations which would arise in a negotiation about new arrangements for the government of Northern Ireland; (b) assess the present positions of the parties and identify the constraints on the Government's freedom of manoeuvre; and (c) propose a strategy for handling the issues in negotiation. It concentrates on Strand I of talks, but it should be noted that security issues will also arise in Strand III (ie Anglo-Irish security co-operation) and also conceivably in Strand II (eg links between any security advisory institutions of a Northern Ireland administration and the Republic of Ireland).

SUMMARY

2. Security is central to the politics of Northern Ireland. A devolved administration which lacked real control of/influence over security matters would be diminished in the eyes of both sides of the community. But devolving "control" of security to an inter-party administration would be difficult in practice. There is no inter-party consensus, either on the scope of the term "security", or on practical policies. There are practical, political, and constitutional constraints on the extent to which HMG could yield up its own "control" over security matters. Nor does HMG itself "control" security operations; the RUC is operationally independent and the armed forces act in support of the RUC. (It might accordingly be more accurate to speak of "responsibility" for security policy.) Tactically, it would be possible to tackle these issues in any negotiation by:

- a) granting limited influence over security policy to a devolved administration from a relatively early stage;

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- b) making clear to the parties in the administration that additional increments of responsibility for/influence over security would depend entirely on the ability of the administration to agree on practical policies. (This condition might be expected, in practice, to limit considerably the administration's capacity to accept new responsibilities in the security field.)

3. Strategically, however, any new administration would remain torn between its desire to assume greater responsibility for security and its practical inability to do so. It would therefore remain highly vulnerable to sudden security shocks (whether incidents, or inter-party disagreements). A necessary condition for withstanding such shocks would be a visibly improving general security situation.

A FUNDAMENTAL QUESTION

4. The preceding summary masks a fundamental issue about which it is as well to be explicit at the outset. Much of this paper proceeds on the assumptions that:

- (a) there would be a range of constraints on devolving responsibility for/influence over security matters to an inter-party administration;
- (b) the tactical positions of the parties are such that their respective desires for devolved responsibility for security may be muted, at least during the early stages of negotiations; and
- (c) the right negotiating position for HMG should be one of readiness to grant early limited influence over security policy to a devolved administration, and to

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hold out no more than the prospect of further increments of responsibility/influence, the grant of which would be conditional on the abilities of the parties to the administration to agree on practical policies.

5. But a different analysis is possible which argues

(a) that many of the constraints on devolving responsibility for/influence over security matters are not inherently insuperable given sufficient political will and consensus (and, incidentally, that the present configuration of responsibilities is neither unitary nor, necessarily, the most coherent one possible);

(b) that at at least some point in political negotiations HMG may well find itself confronted with the strongly held view that a devolution package which does not include a substantial element of control/influence over security is "Mickey Mouse" devolution. Some of Mr Mallon's past pronouncements have tended towards this position. It fits in with recriminations after the collapse of the power-sharing Executive in 1974 to the effect that the army in particular should have done more to counter the erection of barricades and road blocks by the supporters of the UWC strike; and

(c) that, with a devolved administration, responsibility for security should revert at the outset, or as quickly as possible, to a modified version of the 1969-1972 position, with the army still ultimately responsible to Whitehall and Westminster but acting in support of law and order functions for which

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5. It is clear that policy responsibility rested with the devolved administration. The analysis (ie that in paragraph 4) than the second (ie that in paragraph 5), partly because this is

6. Both lines of analysis come up against the "paradox of devolved security": namely, that the survival of a devolved administration arguably depends upon the credibility of its having responsibility for security; that a devolved administration will not, unless the security situation improves, be able to survive the shocks to its stability which will result from having responsibility for security matters; and that responsibility on the part of the devolved administration for security matters is arguably an important step towards a sufficient improvement in the security situation.

7. In terms of HMG's negotiating position the two lines of analysis can to some extent be reconciled in terms of

(a) the extent and pace of any devolution of responsibility for/influence over security matters; and

(b) the force of any commitments given before the commencement of a devolved administration about subsequent devolution of increments of security responsibility (as opposed to influence), and the degree of conditionality attached to any such commitments.

It is very difficult to judge a priori - or at least, in advance of substantive negotiations, before the full hands of the parties are shown, in isolation from the other trade-offs likely to be negotiated over, and without knowledge of the security situation obtaining at the time of negotiation - where these balances should be struck for the purpose of HMG's negotiating position.

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8. It needs to be acknowledged that this paper gives greater weight to the first line of analysis (ie that in paragraph 4) than the second (ie that in paragraph 5), partly because this is arguably more realistic, partly because this is more in line with HMG's approach in previous initiatives towards a political settlement, and partly because it enables a possible negotiating position to be presented clearly. The two main drawbacks with this emphasis are first, that it may play down too much the force of the arguments for security devolution which may be advanced by the parties in a negotiation; and, secondly, that greater devolution of security responsibility/influence, if deliverable and sustainable, is arguably preferable in terms of both the long term health of any devolved administration and of HMG's own interests.

CONSTRAINTS ON HMG

The position of the Army

9. Military support (going beyond locally-based military support) for the police in dealing with terrorism in Northern Ireland will be needed for the foreseeable future. HMG cannot surrender control of the armed forces in Northern Ireland to a devolved administration for reasons of practicality (the armed forces' commitments elsewhere in the world) and accountability (Westminster is not likely to agree to cede accountability for part of HMG's armed forces to a devolved administration, and this would in any case arguably be wrong in principle). Following the alternative line of analysis sketched in paragraph 5 above it would in principle be possible to devise a modified version of the 1969-1972 position, in which the armed forces remained ultimately answerable to Whitehall and Westminster but in practice acted in support of devolved law and order functions and participated in devolved policy and co-ordination machinery. The case for any such arrangement would have to be weighed against the tensions to

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which it could give rise and the unencouraging lessons of the 1969-72 period.

The operational independence of the RUC

10. Day-to-day control of RUC operations is in the hands of the Chief Constable. A series of enactments from the Police Act (NI) 1970, to PACE, have granted far greater operational independence to the RUC than it ever enjoyed under pre-1972 devolved administrations. The Army acts in support of the RUC. HMG controls legislation and resources (including the number of soldiers available for anti-terrorist duties in Northern Ireland) and prisons; and the Secretary of State has reserved some specific powers to himself (such as proscription, requisitions, the banning of marches and sealing of roads other than on a temporary basis). He can exercise an indirect influence over the management of RUC resources, via PANI. But many of the major controversial issues in the security field come down to primarily operational judgements, which the Secretary of State may seek to influence but over which he has no direct control. This position needs to be preserved, in the interests of the operational efficiency and political independence of the security forces. In practice, however, the defeat of terrorism requires close integration of security with political, economic, and social policies. Accordingly the Secretary of State has an input, through bodies such as SPM and SCM, to the operational policy which is followed by the RUC and the Army. The advice of the security force commanders in turn influences the Secretary of State's discharge of his direct responsibilities for the legislative and resource background, and for the work of civil departments. These relationships depend heavily upon mutual trust. It does not follow that they could not be transferred to a devolved administration, from which the Chief Constable would remain operationally independent. Indeed, devolution would in effect mean introducing the influence - albeit perhaps indirect,

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see para 21 below - of a fourth party, the devolved administration, into the present triumvirate. Whether the relationships could work as well after such modification is hard to predict and this would be much influenced by the means by which the "fourth influence" was introduced.

Political and international considerations

11. Westminster is unlikely to wish to repeat the 1921-69 practice of declining to enquire into NI affairs. It is hard to imagine that it would not look ultimately to the Secretary of State for Northern Ireland to answer on security issues. He might also be expected to remain ultimately responsible for the defence of HMG's security policy in the international arena, especially before the European Commission and Court of Human Rights. These considerations are not, however, necessarily incompatible with some devolved accountability. Major decisions on resources would continue to be for the Secretary of State. He is likely to be the person who is arguing the case for resources for both devolved functions and for reserved matters. Finally, the Agreement obligation in effect to consult and make determined efforts to reach agreement with the Irish may need to be replicated in any agreement between HMG and the NI parties about security. They are unlikely to accept less than this.

Effectiveness/efficiency

12. The effectiveness of the security effort must remain paramount. Lines of command, control and communication with the security forces must not be unnecessarily duplicated and a proliferation of bodies with vague executive or supervisory functions must be avoided. Security policy should be clear, consistent, effective, and well understood. Responsibility could not, therefore, be placed in the hands of bodies which were divided, ambivalent, or unsure of their way on security matters.

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These considerations are not incompatible with significant devolved responsibility for/influence over security matters. But they would arguably be harder to satisfy in such circumstances than under present arrangements.

PARTY POSITIONS

13. Differences of understanding and emphasis between the parties on each side of the community are profound. Unionist and nationalist camps both want more "control" of security, but for different reasons. Unionists emphasize the task of defeating Provisional IRA terrorism. Constitutional nationalists, while not dissenting from that objective, lay great stress on mitigating the impact of the security forces on the nationalist community and on cracking down on loyalist paramilitary activity. The two positions are not, therefore, fundamentally incompatible, although different emphases are placed by the two sides on intermediate methods. There are strongly held, and diametrically opposed, views on the future of the UDR. This will be a key issue in any negotiation.

Unionist parties

14. Security is closer to Unionist hearts than almost any other issue, and has a highly-charged political history. Withdrawal of responsibility for security from the Faulkner administration in 1972 led directly to the prorogation of the Stormont Parliament and direct rule. Most Unionists would favour a security policy considerably "tougher" than the present one. (Historically, nationalists in Government have also been tough on security - eg the early days of the Irish Free State.)

15. In public, both Unionist parties remain loyal to the "Faulkner" position. They want eventual control over security policy for any local administration. In private, however,

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Unionists appear to recognise the disadvantages of "divided command" between 1969 and 1972. They are unlikely to want to return to it in the immediate future. Moreover, the Unionist demand for "control" of security appears to be linked to their fear of any acquisition by nationalist parties, whom some see as having comparable objectives to those of PIRA, of influence over security policy. If this seemed likely to happen, then Unionists might want to reconsider. We assess that:

a) while they will make noises about the need for "control" of security matters, the Unionists may not want to bring hard discussion of security early onto the agenda. They are more likely to postpone discussion until the broad shape of a new administration has become clear, and then shape their proposals accordingly;

UNIONIST OBJECTIVE

b) when the Unionist position does emerge, it is possible that it will major on a demand to influence, and be seen in public to influence, the Secretary of State's decisions, rather than to take early direct responsibility themselves. (It is unlikely, however, that either Unionist party will renounce the long term objective of full "devolved" control over security, even if they do not actively seek it.)

SDLP

16. The SDLP highly value real "control" over security policy, and indeed operations. The issue of security force "harassment" is central to many nationalists. It is also an issue on which the SDLP risks being outflanked by Sinn Fein. The future of the UDR will be a key concern.

17. Should this mean a devolved administration, with SDLP

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participation, taking direct "control" of security issues? This is a difficult issue for the party. On one, probably predominant, view, the SDLP would be best placed to influence security policy through a devolved administration which had a direct impact on security. On another view, the party would benefit more from a situation in which security remained in Westminster (and therefore out of Unionist) hands, yet susceptible to influence by a SDLP operating from the platform of a devolved administration, and through the Irish Government on the East/West dimension. This is a difficult decision which the party may leave until the last moment. We assess that at the start the SDLP will play a waiting game. This should not, however, mislead us as to the depth of the SDLP's desire to take greater control, or the party's capacity to produce stiff demands (eg on the future of the UDR) as the price for acceptance of a devolved administration.

HMG'S OBJECTIVE

18. Neither an examination of the constraints over devolution of aspects of security policy nor a review of the likely unionist and nationalist positions produces a decisive choice between the two lines of analysis summarised in paragraphs 4 and 5 above. A definitive view as to where the balance of advantage lies arguably cannot be reached until the actual positions of the parties and the substance and context of negotiations are known. The remainder of this paper errs on the side of assuming that the parties should be offered what amounts in practical terms to a degree of influence over, rather than responsibility for, security matters, at least for the initial stages of any devolved administration. It does so in recognition of

- (a) the difficulty of being confident that the constraints on devolution noted in paragraphs 9-12 could be smoothly resolved;

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- (b) the analysis of the practical positions of the parties in negotiations (as distinct from their stated articles of faith) in paragraphs 13-17 above, although some would argue that this is too sanguine; and
- (c) the relative likelihood that any devolved administration would not in its early days be based on as broad or solid a consensus as might be wished, and therefore that its vulnerability might be unacceptably increased by premature exercise of security functions.

Even on this view, however, it would be important for HMG to keep the door open to the devolution of a greater degree of influence over security matters, and even in due course of some of the responsibility which Secretary of State now holds in his own hands (para 10) at a later stage. Without this, it is perhaps unlikely that the parties could be brought to agree on an initial form of administration. This suggests that any expression of readiness by HMG to contemplate some subsequent devolution of security responsibility should as far as possible avoid being too narrowly circumscribed or too negative about the prospects for such devolution taking place. Equally, HMG should be ready to be frank with the parties about what responsibility actually means, given the degree of operational independence which the RUC now has compared with the position in the early 1970's.

HMG'S TACTICS

19. HMG should aim to:
- (a) retain the maximum freedom of manoeuvre. This includes avoiding an early public commitment to a "minimalist" position;

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- (b) be ready firmly to link the degree of influence granted to a devolved administration to the ability of that administration to agree about practical security issues;
- (c) use the argument at (b) above to justify a more gradual approach to the grant of influence over security matters than would accord with both unionist and nationalist stated positions;
- (d) have available a range of models for grant of early influence to a devolved administration, and also a readiness not to rule out devolution of a degree of responsibility (when the necessary conditions can be met, and not exceeding the Secretary of State's current powers) which can be presented as positively and open endedly as possible.

Present armoury of models

20. Two institutions, and one commitment, are already in place:

- (a) Liaison committees between the police and public have existed in a number of District Council areas since the early 1970s. Their objectives are to develop and maintain good relations between the community and the police; to obtain the views of local people concerning policing matters; to provide better local understanding of the degree to which the police can respond to local problems; and to identify possible solutions to local problems. There are currently 23 Liaison Committees operating throughout Northern Ireland. Three Councils (Armagh, Newry and Mourne, and Omagh) do not participate; but in Armagh and Omagh it has been possible to establish committees

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comprising police and non-elected community devolved representatives. For the most part, SDLP councillors do not attend. PANI are considering the establishment of similar committees in each of the RUC sub-divisions in Belfast. The committee network is unlikely to attract provincial-level politicians. Committees are local bodies and, while providing a helpful community input to policing/security matters, do not offer great scope for further development. But increased SDLP attendance at such committees, if it could be secured, would be both a useful token of seriousness of intent on the nationalist side, and an achieved objective in negotiation. Direct involvement in a discussion of security

(b) PANI, which has wide executive responsibilities in support of the RUC, already has appointed members representative of all sides of the community, although no direct representative of the SDLP. Addition of elected Assembly representatives to its membership would require changes in the law on Assembly disqualification. But it might be possible to give a local administration the right to appoint, or to nominate for appointment by the Secretary of State, a proportion of members. It would be important to minimise the risk of politicizing the work of the Authority, and thereby imperilling both its own work and its relationship with the RUC;

(c) the Government has already stated (paragraph 54 of Cmnd 8541 of April 1982) that it would "consider", once a durable and stable system of Government is established in Northern Ireland, whether any of the "reserved" matters in the 1973 Act (ie most law and order matters) should be placed in the "transferred"

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category and become the responsibility of a devolved administration.

New options for devolving influence

21. A key issue is whether or not there should be direct contact between local political institutions and the security force commanders on security policy issues. The 1982 Assembly's Security and Home Affairs Committee had only indirect influence in the form of meetings with the Secretary of State; and the parties may well, in the event, be content with that. But the question of what formal contact representatives of a functioning local administration should have with security force commanders needs to be addressed. Direct involvement in a discussion of security issues with the security force commanders might give the local body concerned confidence that its arguments had been put across and provide an opportunity to explain the implications and problems to them. It would be important to ensure that, if there were to be a direct interface between any local political institutions and the security force commanders, both parts of the community were represented so that they both had an opportunity to exert influence.

22. It is, however, important to distinguish different levels of contact. One is direct briefing by the security force commanders of any local political institution with an advisory role in relation to security. A second level would be the transmission of elected representatives' views to the security force commanders. A third would be participation by the local administration in policy making bodies, such as SPM/SCM. In accordance with the principles set out at paragraph 12 (and bearing in mind the possibility that any local security input would comprise or reflect at least two different - and probably contradictory - lines of argument on any given security policy issue) it would be important to make clear that only the first two

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levels of activity were intended. Policy making and decision taking would need to happen elsewhere, albeit in the light of local views. There would therefore be a continuing need for parallel tripartite (Secretary of State, RUC, HQNI) security policy meetings.

23. As a matter of negotiating tactics we might propose as our opening bid that there should be no direct contact between local security advisory institutions and the security force commanders and that any such contact should be via the Secretary of State. But we should be ready to negotiate arrangements for direct contact if this enabled us to clinch the deal. Such contact would not, however, extend to the third level distinguished in the previous paragraph.

24. The short-term "influence" measures which the Government could offer in any wider negotiation would comprise:

- (a) Advisory Committee Model I (deriving authority from the Secretary of State). This would be a small body reporting to the Secretary of State rather than to any NI Assembly. It could be either (i) appointed by him or (ii) identical with any Executive (in which case appointment by the Secretary of State might be unnecessary). It would function as a collective "policy adviser", providing advice to the Secretary of State -preferably in private, although that might not be practical- and in parallel with officials and the Intergovernmental Conference. (If the Committee were not to give its advice in private, then it might be possible to devise a system whereby it either prepared papers on topics of its own volition, or dealt with matters referred to it by the Secretary of State, in an arrangement similar to Section 3 of the Northern Ireland Act 1982. Such papers - and the NIO

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responses to them - could be published.) A possibility best not offered at the outset in any negotiation is that the Secretary of State might undertake to make "determined efforts" to seek to reach agreement with the Committee (by analogy with the formula in Article 2(b) in the Anglo-Irish Agreement). On the question of the Committee's access to briefing from the security forces, a gradualist approach might be appropriate, in accordance with the principles suggested in paragraph 23 above. Thus, initially, briefing could be provided orally or in writing by NIO officials, developing into NIO - led visits to security force installations, and more direct contact with the security forces generally. The Chief Constable attends meetings of the Anglo-Irish Intergovernment Conference; accordingly, even if the Committee were not initially granted access to him, it would be difficult not to hold out the eventual prospect that the Chief Constable would meet the Committee; and if the parties attached importance to the point in negotiation, this is something which could be granted from the outset. The Committee would not, however, attend SPM/SCM; nor would any of its members. It would be for consideration whether a Model I Advisory Committee would have power to summon witnesses or call for papers.

- (b) Advisory Committee - Model II (deriving authority from the Assembly.) This could, conceivably, run in parallel with (i), although the detailed arrangements for this would have to be carefully designed. It would be appointed by the Assembly on the model of the statutory committees established under the 1982 Act. It might be rather larger than the Model I

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Committee. It would have an agreed right (which the Assembly under present legislation does not necessarily have) to discuss security matters; either by explicit concession by the Secretary of State, or as a result of giving the Committee a new statutory basis. The Secretary of State could undertake to meet and brief the Committee regularly; to listen to its representations and proposals; to respond by explaining the Government's position and discussing the issues; to make "efforts" (determined or otherwise) to resolve disagreements between the Government and the Committee. The Government would reserve its ultimate responsibility for decision-making. The operational independence of the Chief Constable, would, as now, be preserved. If such a Committee had a statutory basis there would be an expectation that it could call for papers, hold hearings and interview officials, since the Assembly statutory committees had these powers.

(c) a "Commission" (or Commissions) on security. This would in some ways be similar to the Advisory Committee Model I, eg in appointment, composition and modus operandi. It would accordingly derive its authority and remit from the Secretary of State and report back to him. It would differ in having a limited specific remit to examine particular security issues, following which the Commission would produce a report and disband (to be reconstituted again as often seemed desirable.) It would not have powers to summon witnesses or call for papers. The advantages of this re-packaging of Model I are that it might be of interest to the SDLP; but at the same time the Commission would operate on a very short leash from HMG. The key to the Commission approach would be

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careful and balanced selection, both of membership and of topics for examination. It would be important to start with a balanced package of topics. The agenda would be for negotiation; we could certainly face demands for it to include such difficult issues as accompaniment, the future of the UDR, and the cross-border measures.

Options for devolution of control

25. The chief is "rolling devolution" of certain reserved matters to the Assembly. This would build on the undertaking to "consider" devolution of some or all of the reserved matters, given in cmd 8541. In the nature of things, no such devolution is likely to be possible unless and until a devolved administration had shown itself to be sufficiently widely acceptable and stable. But once this point had been reached, then the selective devolution of items in the "reserved" category under the Constitution Act might become possible. (Indeed, existing constitutional legislation provides for this to be done). This would require the creation of a new "home office" department in Northern Ireland, carved out of part of NIO.

26. Among the less contentious - and therefore possibly earlier - candidates for devolution on this basis might be compensation for the victims of crime, traffic wardens, and perhaps certain aspects of the criminal law. Prisons administration is more difficult: on the one hand it is administratively less inconvenient than other functions for devolution, and if devolved would strongly demonstrate the weight of the functions to be exercised by the devolved administration; on the other, it can be a highly politically charged function (eg as at the time of the hunger strikes) whose early exercise by a devolved administration could put its survival at risk. Further down the track would be assumption by a devolved administration of responsibility for

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other reserved matters under Schedule 3 to the 1973 Constitution Act, such as courts administration, public order, police powers, crime prevention, pay and rations for the DPP(NI) and Crown Solicitor, fugitive offenders, general police policy, and firearms and explosives. It would be for consideration whether there should be separate law officers for Northern Ireland. At the moment, some of these functions at least look like remote prospects for devolution, but it is important for the purposes of negotiation that they should not be ruled out for all time. The present schedule of excepted matters under the 1973 Act includes international relations, the armed forces, treason, nationality, immigration, Customs, judicial appointments, appointment of the DPP(NI) and special powers for dealing with terrorism or subversion. To this might be added intelligence matters. While most of these functions continue to look unsuitable for devolution it is arguable that at least some of them should not be ruled out for all time for consideration for devolution.

The UDR issue in talks

27. Up until the announcement of the UDR/RIR Merger last summer, it could have been predicted that the future of the UDR would have been a significant issue in talks about security and devolution. There is now reason to believe that the merger, approved by Parliament in the Army Act 1992, has defused this issue, at least temporarily. Although the DUP will continue to argue their case against what they see as 'abolition' of the UDR, HMG has a good case for arguing in response that the UDR issue is now disposed of; and that to the extent that it is not disposed of, that both unionists and nationalists would be able to influence, through a devolved administration, the development of the merged regiment in agreed ways. This approach presumes that agreement, or at least tacit acceptance that HMG (through MoD) should be able to continue the development of the regiment along

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its own preferred lines, is possible; which there is some reason to accept.

Summary and Conclusion

28. The extent to which responsibility for/influence over security should be devolved is a thorny issue. There are arguments, which the parties may well expouse, (paragraph 5) for adopting a relatively generous approach to the grant of control/influence to a local administration, and it is important that the door to a generous approach at some time in the future should not be closed. However, HMG's room for manoeuvre is closely constrained and a prudent working assumption is that relatively limited influence over security policy is all that should be offered as an opening bid, at least so far as the initial period of any new local political institutions is concerned. Tactically, the two approaches are anyway reconcilable (paragraph 7 and 19).

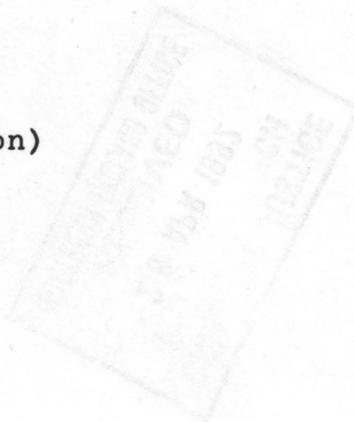
29. Whithin this framework, a number of advisory structures could be evolved which might achieve the twin objective of allowing parties to influence security policy, while preserving the present constitutional distribution of responsibility. In particular, it appears possible to devise an Advisory Council on security answerable to the Secretary of State and/or a security Committee of a revived Assembly. Alternatively, the first of these bodies could appear behind a short term "Commission" mask. To these could be added possible changes to the membership or means of appointment of PANI; and, although perhaps not at the outset, some limited devolution of peripheral law and order functions. The local administration would not enjoy a place at the decisions table, and as an opening bid we should aim to have its influence on decisions mediated through the Secretary of State - although direct access to the security force commanders might well prove necessary not far down the track, this should be on a briefing/communication of views basis. Conceivably, in the longer

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term, the bulk of the law and order field could be devolved; but this is arguably dependent on a scenario amounting almost to "peace achieved".

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