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# NAVAL POSTGRADUATE SCHOOL Monterey, California



## THESIS

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GOVERNMENT ACTIONS TO CONTROL TERRORIST  
VIOLENCE; A CASE STUDY ON NORTHERN IRELAND  
  
by  
  
Maura Katherine Naughton  
  
March 1988  
  
Thesis Advisor: Russel H.S. Stolfi

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A Case Study on Northern Ireland

by

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Submitted in partial fulfillment of the  
requirements for the degree of

MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS

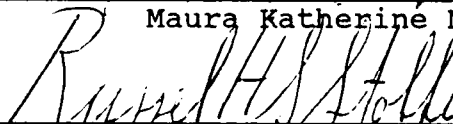
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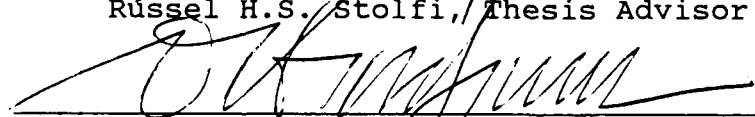
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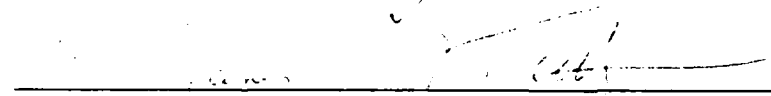
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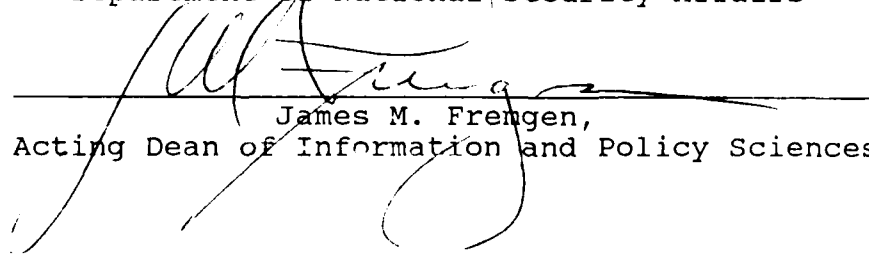
  
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## ABSTRACT

Using the historical method, this study of terrorism in Northern Ireland examines the variables of conflict, the existing violence and government endeavors to eradicate that violence. This study does so within the framework of United States' interests. Irish terrorism has been a problem for the British government for centuries. The current round since 1969 has produced vast improvements in the security forces and enforcement techniques, yet the I.R.A. and its political wing, Sinn Fein, survive. Government actions must include measures aimed at the root causes of terrorist movements. The relative degradation of the Catholic community within Northern Ireland has received international attention and has been the focus of much of the British government's efforts to legislate improvements in Northern Ireland. It appears that only through this process can peace and reconciliation in Northern Ireland take place.

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The British Consulate in San Francisco provided me with up-to-date results from the 1987 British general election and copies of documents published in Northern Ireland by some of the different political parties. The San Francisco Irish Forum also deserves much thanks for their invaluable help. The thesis research trip to Great Britain and Northern Ireland taken 19 April through 9 May 1987 was infinitely more fruitful due to the planning and organizational ability of Patrick Goggins. Given the time constraints and distances traveled, there was no stone left unturned.



Two images must be recorded here from that trip as a snapshot of what characteristics the "Troubles" in Northern Ireland have produced in the people involved. The first is of Sister Sarah Clarke, a nun in the London suburb of Camdentown. Although short in physical stature, her personal efforts in caring for the families of Irish prisoners who come from Ireland and Northern Ireland to visit their loved ones in British prisons is no small achievement. This is a thankless job for which she receives little support. Sister Sarah speaks with greater understanding about the concerns of the everyday people involved in the "Troubles" than most politicians, academicians, or civil servants directly responsible or closely involved.

The second image to put this picture in perspective is one of dinosaur of the British Empire, Ian Gow. Leader of the Friends of the Unionists, Mr. Gow is a conservative member of parliament who resigned his ministerial post in protest against the Anglo-Irish Agreement. His archaic rhetoric allows for no reconciliation between the Nationalist and Unionist communities. He is an example of why the situation in Northern Ireland has perpetuated itself for so long.

## I. INTRODUCTION

Can terrorist violence be curbed through government action? Through careful examination of the case of Northern Ireland, this paper examines the success and failure of the British government's attempts to cope with Irish terrorism. Anti-terrorist legislation, international agreements and massive security efforts have produced some positive results in the war against terrorism. Unfortunately, these measures have also often proven counter-productive, producing a backlash of violence, nonsupport for the security forces and electoral success for Sinn Fein, the Irish Republican Army's political wing. The chasm between the Catholic Nationalist and Protestant Loyalist communities widens; moderate proposals fall on deaf ears and extremists win the day with unequalled intransigence.

All attempts to adopt a coordinated, coherent policy to deal with the violence in Northern Ireland meet great resistance from the Northern Irish population. This is because any threat--real or supposed--to the political status quo in the province elicits violent counter-protests.<sup>1</sup> The government's effectiveness has thus been greatly hampered. To counteract this ineffectiveness the

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<sup>1</sup>Keith Jeffrey, Northern Ireland; The Divided Province (New York: Crescent Books, 1985), p. 87.

successive governments of Ireland, Northern Ireland and Great Britain have consistently resorted to draconian measures in an effort to deal with the "Troubles."

Stormont, the Parliament of Northern Ireland, was brought down in 1972 in the aftermath of escalating violence and the government's failure to restore law-and-order. The Parliament had become a monolith of Protestant Unionism known for sanctioning policies of discrimination towards the Catholic minority. The prorogation of Stormont and the introduction of direct rule by Westminster was welcomed as the "least worst" of possible solutions by both Catholics and Protestants because of institutionalized discrimination, and because of Stormont's ineffectiveness in coping with the terrorist violence.

In the February 1987 elections of the Republic of Ireland only five percent of those eligible to vote considered Northern Ireland as a main issue. While possessing the capability to jump into the headlines with the endless campaigns of violence, Northern Ireland is no longer a top-level policy priority for the British or the Southern Irish. Within the British Parliament, Northern Irish MPs<sup>2</sup> are relatively powerless, holding only 17 of the 650 seats in the House of Commons, while ministerial positions for Northern Ireland are appointed by the Prime

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<sup>2</sup>Members of Parliament.

Minister from her Tory benches and fall directly under the British Home Secretary of State.

Resolving the differences between the two communities in Northern Ireland must be done in methodical steps and progress measured in decades, perhaps centuries. Such progress must be achieved, however, to "dry up" the seas of nationalist support for the Irish Republican Army. That support was created from centuries of mistreatment and mishandling of Irish Catholics by successive British governments and is an almost classical historical example of man's inhumanity to man. Now the British government is committed, whether it be through reluctant enactment of civil rights legislation for Catholics, or deep resolve not to be beaten by terrorist actions, in an attempt to make up for past injustices. The more enlightened civil servants recognize that any structure of devolved government must accommodate the two legitimate traditions of Unionist and Nationalist in Northern Ireland. The same civil servants realize a unique triangular relationship between Belfast, London, and Dublin must also be taken into consideration.

A. IRELAND TODAY

Ireland is a large island in the North Atlantic. The southern five-sixths of the island constitute the sovereign nation-state of Ireland while the northern one-sixth chooses to remain as a part of the United Kingdom governed directly through London. The total population of this Irish island

today is approximately five million, 3.5 million in the south and 1.5 in the north. From this relatively small inhabitancy has come a sizable portion of the population of North America, not to mention the Irish sent to the Australian penal colonies and those Irish who chose to live in England. Over forty million Americans claim Irish ancestry. From these millions, important political leaders have emerged (no less than 11 U.S. Presidents, John F. Kennedy and Ronald Reagan, to name a few, as well as Canadian Prime Minister Brian Mulrooney). Yet, while these leaders may reflect favorably to Ireland's credit as sons and daughters of "Erin," this island has not yet produced a leader of such caliber as to lead her out of the civil strife that tears at Northern Ireland today.

A permanent solution to the deep-seated sectarian split that divides the Irish population--both North and South--into Catholic and Protestant remains an elusive dream, but some progress has been made. The people of Ireland on both sides of the border are living better today than any other period of history, albeit living conditions and the standard of living in Ireland are the lowest of any West European nation and the standard of living in Northern Ireland is the lowest within the United Kingdom. The present party line for Northern Ireland promulgated from both Dublin and London is that any solution will take a great deal of time and will

not be enacted against the will of the majority of the Northern Irish population.

The birth rate of the Northern Irish Catholics, outpacing that of the Protestants, alludes to an eventual Catholic majority and a future reunification with the South. Protestant extremists in the North, however, violently oppose any thought of a Dublin government having a legal influence in the affairs of Northern Ireland. The conclusion of the Anglo-Irish Accord was considered a betrayal to the Loyalist cause and is duly commemorated in the tradition of deadly violence that characterizes life in Northern Ireland.<sup>3</sup>

#### B. THE ELECTIONS

In February 1987 men and women of the Irish Republic went to the polls to elect a new government replacing the one which had been brought down under its own weight from government overspending and large debt. High taxation, low pay, 20 percent unemployment, gasoline at two pounds seventy pence per gallon, and long lines to emigrate were the issues in this election, not Northern Ireland.<sup>4</sup> The "Irish Question," while it remains an emotive issue in the

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<sup>3</sup>"50 Injured in Massive Belfast Protest," San Jose Mercury News, 16 November 1986, sec. 1, p. 3, and "Ulster Protestants March to the Old Tune of 'No'," The New York Times, 13 August 1986, sec. 1, p. 6.

<sup>4</sup>"Dublin's Choice is All Forlorn," The Guardian (London), 17 February 1987, sec. 1, p. 12.

Republican tradition,<sup>5</sup> has been preempted by more serious immediate issues as Ireland struggles to recover from the "Sick Man of Europe" syndrome. The election of Charles Haughey as Prime Minister gave rise to the hopes of Unionists that the Anglo-Irish Agreement, enacted 16 months earlier by the former prime minister, would be abandoned by the New Irish government. Mr. Haughey had been a leading critic of the Anglo-Irish Agreement; while his party was in the opposition even though many of the initiatives of the Accord had been generated during his previous tenure as Taoiseach.<sup>6</sup> In power once more, Mr. Haughey came out strongly supporting the Agreement. Sinn Fein, the radical nationalist political wing of the Irish Republican Army, received a dismal 1.8% of the vote.

The June 1987 general elections of the British government produced mixed success for moderates. Enoch Powell, Official Unionist Party MP for South Down, lost his seat to Eddie McGrady of the moderate Social Democratic and Labor Party (SDLP). Mr. Powell had been one of the most vociferous opponents of the Anglo-Irish Accord, while John Hume, leader of the SDLP, had been one of its leading architects. In West Belfast where the Provisional I.R.A.

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<sup>5</sup>The "Republican Tradition" refers to Irish Catholic Nationalist's aspirations for the Irish nation to encompass the whole island of Ireland, completely independent of Britain.

<sup>6</sup>Irish Gaelic for Prime Minister.

thrives and the constituency is represented by Sinn Fein's president and best-known spokesman, Gerry Adams, another SDLP candidate, Joe Henderson, whittled away at Mr. Adam's previous election margin of over 5,000 votes. Although Mr. Adams retained his seat in West Belfast, there was a swing to the SDLP candidate of 3.4%, reducing the margin of defeat to just 2,200 votes. Here the counter-productive nature of combating terrorism is most visible. Just a month earlier, eight I.R.A. volunteers attempting to blow up a police station were killed in an ambush by the British S.A.S.<sup>7</sup> That act, combined with the large police presence at the funerals of the I.R.A. men, gave Mr. Adams the propaganda to win out over moderation and perpetuate his legitimacy in the eyes of his constituency. Of the total 730,152 votes cast in the 1987 general election in Northern Ireland, 83,389 votes (11.4%) went to Sinn Fein. This is a decrease from the 102,000 votes cast for Sinn Fein in the 1983 general election, yet it reflects the successful electoral performance amassed after the I.R.A. hunger strikes in 1982.

#### C. IRISH NEUTRALITY; THE QUIET SUBJECT

Irish neutrality is a matter of policy, not international guarantee, treaty, or constitutional provision. It has acquired a hollowed status in Irish

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<sup>7</sup>S.A.S.--Special Air Service, the elite counter-terrorism unit of the British Army.



political culture.<sup>8</sup> Ireland was invited to join NATO in 1949 when the alliance was first formed. While the Irish government concurred with the general aim of NATO, the position taken was that it could not be a party to an alliance which included the very power that was occupying the northern one-sixth of Ireland. "The continuance of partition precludes us from taking our rightful place in the affairs of Europe."<sup>9</sup>

Six of Ireland's north-eastern counties are occupied by British forces against the will of the overwhelming majority of the Irish people. As a result, any military alliance, or commitment involving military action jointly with the State that is responsible for the unnatural division of Ireland, which occupies a portion of our country with its armed forces, and which supports undemocratic institutions in the north-eastern corner of Ireland, would be entirely repugnant and unacceptable to the Irish people.<sup>10</sup>

While the Irish government rejected membership in the multi-member NATO, the Foreign Minister, Sean McBride, sought to secure a bilateral treaty of defense with the United States.<sup>11</sup> The milieu at the time, however, dictated that the collective nature of NATO not be undermined by separate bilateral agreements. To enter into such an

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<sup>8</sup>Trevor C. Salmon, "Irish Neutrality--A Policy in Course of Evolution," NATO Review, Vol. 32, No. 1, 1984, p. 28.

<sup>9</sup>William FitzGerald, Irish Unification and NATO (Dublin: Dublin University Press, 1982), p. 29.

<sup>10</sup>Salmon, "Irish Neutrality," p. 29.

<sup>11</sup>Trevor C. Salmon, "Ireland: A Neutral in the Community," Journal of Common Market Studies, Vol. XX, No. 3, March 1982, p. 208.

agreement with Ireland might create a precedent. Irish membership in a defensive alliance was desirable, but not essential.<sup>12</sup> Northern Ireland, controlled by Great Britain, is presently included in NATO.

Irish schizophrenia towards the British is illustrated by the defense of Ireland during the Second World War. The Irish Army was assigned a dual role; the First Division was to hold off a German invasion from the south until British reinforcements could be invited to support the Irish defenders; the Second Division was deployed on the border of the six northern counties, and its commander, Major General Hugo McNeill, anxiously sought assurances from the German ambassador that the Axis would help in the event of a British invasion.<sup>13</sup>

World War II verified the strategic importance of Ireland. The lines of communication between America and Europe are significantly enhanced with the inclusion of Ireland as a link. During the War, the newly-formed coalition government of the Irish Republic refused the British the use of ports in the south of Ireland. This hurt British shipping by denying supply route flexibility channeling convoys into the enemy's path. For the Allies an

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<sup>12</sup>Salmon, "Irish Neutrality," p. 30. Reference is to a U.S. National Security Council study of the question of a defensive alliance with Ireland.

<sup>13</sup>Dennis J. Fodor, The Neutrals (Alexandria: Time-Life Books, 1982), p. 156.

abiding lesson of the war was that Ireland remained strategically vital and that only by relying on Northern Ireland's loyalty to Britain could the Atlantic be secure against a future enemy. Were it not for Ulster's loyalty, claimed Winston Churchill, "slavery and death" would have been Britain's fate.<sup>14</sup>

The northern access route into the Atlantic has risen in significance as Soviet naval power has increased. And although Shannon airport ceased to be a necessary refueling point for trans-Atlantic flights in the early 1960's, Aeroflot has become Shannon's second largest customer. Flights can be made from Moscow to Managua, Lima, Kingston and Mexico City via Havana without stopping in a NATO country.

Northern Ireland gives the NATO alliance a foothold on the "Gibraltar of the Atlantic."<sup>15</sup> A trade-off between Irish unification for Ireland's membership in NATO is rarely a topic of debate, yet it remains an issue as the European Community seeks to coordinate positions "...more closely on the economic and political aspects of security." Membership in the E.E.C. has given Ireland a definite self-interest in the defense of Western Europe. Although the issue of

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<sup>14</sup>John Bowman, DeValera and the Ulster Question, 1917-1973 (Oxford: Oxford University Press, 1982), p. 254.

<sup>15</sup>Lt. Cdr. Robert E. Vinning, "Restatement and Review of the Situation in Ireland and Northern Ireland," 1943, p. 28; quote from a speech made by James M. Dillon to the Dail Eireann 15 July 1942, Hoover Archives, Stanford, California.

bartering Irish neutrality for unification is politically unpopular, Ireland is going down the path to European defensive cooperation and it is wrong to assume that the lack of formal arrangements mean that Ireland is totally free from any defense commitments or more particularly defense obligations.<sup>16</sup>

The issue of Irish neutrality is not a subject overlooked by the I.R.A. which takes the position that Ireland's membership in the European Economic Community (E.E.C.) is no less than economic subjugation of Ireland by Britain. Ireland's national sovereignty and neutrality are undermined by membership. The socialist inclinations of some of the principal revolutionaries indicate that Dublin, London, the United Nations (U.N.), the E.E.C. and the United States have an interest in ensuring that a West European Cuba does not emerge from a civil war promulgated by the I.R.A.

The most recent litmus test of this Irish commitment to the E.E.C. was in May 1987. The Irish government had ratified a new package of legislation, the Single European Act (SEA), produced by the E.E.C. designed to promote closer cooperation among the 12 members on foreign-policy issues. The SEA gave the European Parliament more influence and empowers the E.E.C.'s Council of Ministers to make most

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<sup>16</sup>Salmon, "Ireland: A Neutral in the Community," p. 226.

decisions by majority vote rather than unanimity. This ratification was challenged in court on the ground that it compromised the Irish Constitution. Ireland's constitution was born out of former Prime Minister Eamon de Valera's conviction that Ireland must have absolute sovereignty over its own affairs and that no foreign power (especially Great Britain) would have any share in governing Ireland. The Irish Supreme Court ruled 3-2 that the S.E.A. did breach this sovereignty and a referendum was called. On May 26, Irish voters approved by a 2-1 margin the S.E.A. As NATO's future tacks towards greater European cooperation and a diminished role for the United States, this approval must be interpreted as a plus for American interests.

Producing a functional government in a land where moderation and compromise were, until recent years unheard of, may appear impossible. But the people of Northern Ireland have recognized a need for restructuring the constitutional framework to include the Catholic minority in the decision making process. A Scenario for Peace,<sup>17</sup> Common Sense,<sup>18</sup> and the Unionist party's publication An End to the Drift<sup>19</sup> each represent proposals generated from within Northern Ireland instead of those imposed from others outside the Province. The next giant step is for the

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<sup>17</sup>Sinn Fein document--see Appendix C.

<sup>18</sup>Ulster Defense Association document--see Appendix D.

<sup>19</sup>Ulster Unionist party document--see Appendix E.

Northern Irish to generate internal dialogues aimed at compromise.

This study examines the issues of Irish terrorism and the British government's initiatives to combat Irish terrorism from the perspective of U.S. interests. The importance of Ireland to the United States will not diminish in the near future. Although weighted against other world issues the tragedy of Northern Ireland takes on a lesser priority, it still receives a sizable portion of American attention. U.S. policy towards Ireland since 1916 has been "non-interference" in the resolution of its national question vis-a-vis Great Britain, which means objectively it has supported the United Kingdom.<sup>20</sup> The U.S.-UK Supplementary Extradition Treaty angered many in the Irish-American community who are sympathetic with Irish Nationalists. No doubt the thought of a united Ireland strikes a romantic chord throughout the Nationalist Camp. Unfortunately many unenlightened Irish-Americans believe unification is the sole cause of the I.R.A. and are not aware of the I.R.A.'s socialist leanings. Noraid<sup>21</sup> has

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<sup>20</sup>Sean Cronin, Washington's Irish Policy: 1916-1986 (Dublin: Anvil Books, 1987), p. 325.

<sup>21</sup>Noraid (Irish Northern Aid) is an American organization established by Irish Republican immigrant Michale Flannery for the purpose of providing financial support to the I.R.A. The organization also acts as a political lobby. See, for example, James Adams, The Financing of Terror (New York: Simon and Schuster, 1986), pp. 131-155.

successfully used this sympathy to produce money and guns for the I.R.A. The Extradition Treaty was a signal to an important ally that the United States could make unpopular commitments and counter some of the support which flows from this country to the I.R.A. Monetary contributors to the International Fund<sup>22</sup> also exhibit an active commitment to peace and reconciliation.

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<sup>22</sup>The International Fund was established as a result of the Anglo-Irish Agreement for the purpose of "development of those parts of Ireland which have suffered most severely from the consequences of the instability of recent years."

## II. A BACKGROUND TO THE CONFLICT

### A. A ROAD FROM THE PAST TO THE PRESENT

The first significant appearance of the British in Ireland was in the 12th century when Pope Adrian IV granted Henry II of England lordship of Ireland. This was to initiate the beginning of the struggle between the English and the Irish which would continue to the present day.

By the 17th century, three of the four provinces (Leinster, Munster, Connaught and Ulster) had been subjugated to an English administration installed in Dublin. The last holdout, Ulster, was subdued by the resettlement of 170,000 people, 150,000 of them Scottish Presbyterians.<sup>1</sup> This "plantation" proved to be permanent, and the descendants of those people make up the Protestant majority of Northern Ireland today.

The subjugation of Ulster was by no means a peaceful process. In 1641, the indigenous Irish, from whom the land for the new residents had been expropriated, rebelled. Thirty thousand Protestants were killed. Later in the decade, Cromwell and his Puritan army forcefully and brutally subdued Ireland. In 1690, the Protestants were securely settled when Protestant King William III of Orange

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<sup>1</sup>Keith Jeffery, Northern Ireland, The Divided Province (New York: Crescent Books, 1985), p. 3.



defeated Catholic King James II at the Battle of the Boyne. This event is important because much of the violence today occurs when the Orangemen (Protestants) march to commemorate the victory over James. The irony of this victory was that William had the blessing of the Pope in his war with James.

At the end of the 18th century, when the seeds of modern nationalism were being sown in America and France, Ireland, too, was caught up in the spirit of revolution. The year 1798 saw the revolt of the United Irishmen supported by the French against the English. This group of rebels was led by Theobald Wolf Tone, a Dublin Protestant who was to become known as the father of modern Irish independence. The noble goals of the United Irishmen were to first abolish the memory of all past dissensions, and second, substitute the common name of Irishman in place of the denominations of Protestant, Catholic, and dissenter.

These goals were never realized. As Catholics had gained the right to bid on leases, they often undercut the more conservative and long-established Presbyterians. By the time of the uprising, the Presbyterians were dead set against Catholics on religious grounds. Night riding and raids by opposing gangs distinguished this rebellion which grew bloody and sectarian in character. The rising was brutally suppressed by Presbyterians in the Yeomanry. This marked the formation of the Orange Order from the Presbyterian raiders and Yeomanry and gave formal expression

to Catholic hatred. The rising was an embarrassing failure, but marks the modern foundation of the Irish nationalist movement with the Catholics in one camp and the Protestants in another.

As a result of the insurrection, Parliament enacted the 1801 Act of the Union of Great Britain and Ireland. The British dissolved the Irish Parliament, but in return Ireland was permitted to send four spiritual lords, 28 life peers, and 100 representatives to the Commons. The cross of Saint Patrick was added to the cross of Saint George and the Scottish cross of Saint Andrew to form the Union Jack, signifying a United Kingdom. At this juncture, Irish politics gradually began to divide along religious lines. The Protestants supported the Union and the Catholics increasingly espoused nationalistic aspirations.

In 1828, Daniel O'Connell was elected to the Parliament. He fought for Catholic emancipation and each gain made towards that end was considered by the Protestants a threat against them. Each new reform or relief measure added to the polarization of the communities along religious lines. Even though Catholics were characterized by Protestants as anti-British Irish nationalists, O'Connell, with support of the Duke of Wellington, was able to push through the Catholic Emancipation Bill. This bill granted the right to suffrage, the right to sit in Parliament, and made Catholics

eligible for any office except Lord Chancellor of England and Lord Lieutenant of Ireland.

Not everyone agreed with O'Connell's peaceful methods. For every gain made, there appeared to be an equally repressive concession. Adding insult to injury, Irish Catholics were required to pay tithes to support the Episcopal Church. These circumstances led to the formation of the Young Ireland Party. Led by William Smith O'Brian, this group perpetrated a series of agrarian crimes which caused the suspension of the writ of Habeas Corpus Act for Ireland.

The potato famine exacerbated Irish poverty and the political malaise. Starvation and emigration between 1841 and 1851 reduced the Irish population from over eight million to six million. This decline in population was not a temporary phenomenon. Between 1848 and 1914, close to five and a half million Irish men and women emigrated.<sup>2</sup> This relative deprivation and the 1848 revolutionary movements radiating from the continent precipitated yet another insurrection, this time, in Tipperary. The rebels were unequal to the forces of the constabulary and the rising was soon foiled, but not completely extinguished. The next decade saw the establishment of the Irish Republican Brotherhood (the Fenians). Despite considerable

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<sup>2</sup>Gearoid O'Tuathaigh, "The Distressed Society," The Irish World, ed. Brian de Bieffrey (New York: Crown Publishers, 1986), p. 189.

financial backing from the Irish-Americans, insurrections attempted by the Fenians failed, but the Irish Republican Brotherhood survived to form the Irish Republican Army.

Charles Stewart Parnell, the "uncrowned King of Ireland," became a major political force from 1877 to 1891. He attained the leadership of the Irish Party in Westminster and led the fight for the abolition of the Act of Union. The Act was to be replaced by Irish Home Rule. Parnell was politically destroyed, however, in a divorce scandal and died without realizing his goals for Ireland.

Home Rule aspirations remained alive and well even at the death of their champion. A new defender was found in John Redmond, leader of the 84 Irish Nationalist Members of Parliament at Westminster. The specter of the sectarian split again reared its ugly head; Protestants supported the Union, and the Catholics Home Rule. By the time the Bill was finally passed in the House of Commons in 1913, the North had formed the Ulster Volunteer Force of over 100,000 recruits to take armed action against Home Rule, while the South had raised 200,000 Irish Volunteers to defend it.<sup>3</sup>

The Home Rule Bill was scheduled to become law in the summer of 1914, but with the outbreak of the First World War, it was suspended until six months after the close of hostilities. Redmond had pledged the support of the Irish Volunteers to fight in the British war effort, and most

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<sup>3</sup>Jeffery, Northern Ireland, p. 13.

supported him. Thirty thousand of the Ulster Volunteer Force joined almost en masse and effectively became the 36th (Ulster) Division.<sup>4</sup>

#### B. ENGLAND'S EXTREMITY IS IRELAND'S OPPORTUNITY

Up to this point the numerous rebellions had not changed the status quo. The English ruled the Irish, usually incompetently, sometimes cruelly, and almost always negligently.<sup>5</sup> The Easter Rebellion of 1916, as each insurrection before it, was also a failure, but it represented the beginning of the end of British rule in all but six of Ireland's 32 counties. The date, April 24, 1916 --Easter Monday--was suggested as having mystical significance. This was to have been the day when Ireland rose from the grave of oppression.

About 12,000 of the Irish volunteers had remained in Ireland to secure Home Rule and avert partition. These were the hard core nationalists led by Patrick Pearse, a school teacher and poet. Another group of no more than 200 called the "Citizen Army" was led by James Connolly, a Marxist-socialist active in the trade unions. Pearse and the military council, which had assumed command of the Irish Volunteers, decided to stage an armed rising on Easter and Connolly agreed to cooperate. General maneuvers were called

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<sup>4</sup>Jeffery, Northern Ireland, p. 15. (author's bold)

<sup>5</sup>Ferdinand Mount, "The I.R.A. and the Bar Rooms of America," The American Spectator, January 1980, p. 14.

and about 2,000 men were paraded with rifles and then moved off to occupy prearranged positions in the city. An attack on Dublin Castle failed, but railway and telegraph wires were cut, and barricades were thrown up in the streets to block roads leading into the capital.<sup>6</sup>

Fighting was heavy for six days. The rebel forces were greatly outnumbered by the British. Contained in Dublin, the revolt resulted in many casualties to the towns people, most of whom were innocent bystanders. Casualties to bystanders included 216 dead and over 2,500 wounded, mostly from British artillery fire. The rebels suffered 56 dead and 132 wounded,<sup>7</sup> the British lost 130 dead and 373 wounded. By Friday of the Easter Week Uprising, the lines of communication between the insurgent strongholds were broken, the post office was demolished and Pearse issued a statement renouncing hope of military success. By Saturday morning, the decision to surrender unconditionally was reached, and by Sunday, the rising was over.

Aside from arresting known nationalists throughout the country, the British instituted a series of secret courts martial whose sentences included the execution of the leaders. Fifteen men were shot, including Pearse and Connolly, while 65 others were sentenced to life

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<sup>6</sup>D.J. Goodspeed, "Ireland (1916-1921)," History of Revolutions (West Point: United States Military Academy, n.d.), p. 7-5.

<sup>7</sup>Ibid.

imprisonment. The insurgents' romantic sacrifice struck a chord of nationalism throughout Ireland. Public disenchantment with the administration was exacerbated by revulsion at the long-drawn-out series of executions. While the uprising had not been widely supported by the Irish population, the over-reaction of the British Government ensured a mass base of support required for revolutionary success.

The next five years were the most violent in the struggle for Irish independence. The Irish Republican Brotherhood was reorganized into the Irish Republican Army. From 1919 until 1921 when the truce was declared between the British and the I.R.A., 751 people were killed and 1,212 wounded in the Anglo-Irish War. This war was characterized by I.R.A. guerilla tactics against the British security forces and repressive British retaliatory measures against the I.R.A. The Black and Tans, a group of British ex-servicemen who were brought in to supplement police, came to be regarded with particular repugnance by the Irish populace. The toll came to 751 killed--405 of those were police, 150 British Army, and 196 civilians and I.R.A.<sup>8</sup>

Politically the Irish state dates its formation from the December 1918 general election. Sinn Fein (We Ourselves) candidates had swept 73 of the Westminster parliamentary seats. The party had originally been formed in 1905 by

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<sup>8</sup>Jeffery, Northern Ireland, p. 18.

Arthur Griffith as a constitutionalist group consisting mainly of intellectuals. At the Sinn Fein convention in October 1917, the Irish Republican Brotherhood agreed to frame an article in the Sinn Fein convention declaring the movement's aim to be the securing of international recognition of Ireland as an independent Irish Republic.<sup>9</sup> The victorious candidates, 36 of whom were in jail, refused to go to London and formed themselves into the first Dail Eireann (Parliament of Ireland) in January 1919. This tradition of refusing to take the Westminster Parliamentary seats gained through electoral success still remains as a policy of the Sinn Fein Party.

The end of the First World War revived the issue of Home Rule. The question was not one of when but how to implement necessary change. In 1920 Westminster passed a Government of Ireland Act which provided for two separate legislatures, one in Dublin, one in Belfast, both answerable to Westminster. The elections held in May 1921 returned a Unionist majority to the Belfast Parliament and in Dublin, Sinn Fein candidates took all but four of the 128 seats. These Sinn Fein MPs refused to recognize the Dublin Parliament claiming it was another British institution blocking total Irish sovereignty, and formed themselves into the second Dail Eireann in 1921.

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<sup>9</sup>Tim Pat Coogan, The I.R.A., 10th ed. (Glasgow: William Collins Sons & Co., 1987), p. 41.



### C. THE ANGLO-IRISH TREATY, 1921

The negotiated settlement, the Anglo-Irish Treaty, dictated the partitioning of Ireland into the six Protestant majority counties of the North and the 26 Catholic majority counties of the South. This separation represents the border between Northern Ireland and the Republic of Ireland today. The settlement sparked off yet another round of violence. The second Dail Direann ratified the treaty 64 votes to 57 and ultra-republicans, led by Eamon de Valera, quit the Dail in protest. De Valera and his radical republicans plunged the country into civil war in which another 4,000 Irishmen were to meet a violent end to their lives before a unilateral truce was called in 1923.

In 1921, the North, no more than the South, wanted Ireland partitioned. But Unionists were adamant about not being ruled from Dublin,<sup>10</sup> a situation that they considered as quasi rule from Rome. The nationalists in turn stood fast to the demand for total sovereignty from Britain.

The civil war shaped the political party divisions which endure in the Irish Republic today. The pro-treaty or partition party took the name of Fine Gael (Tribe of Gaels); the anti-treaty factions were the radical Sinn Fein and the more moderate Fianna Fail (Soldiers of Destiny) formed later by de Valera in 1926. Complete separation from Britain was an "ever-persistent" theme to de Valera's politics. He was

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<sup>10</sup>Coogan, I.R.A., p. 46.

to emerge in 1932 as the President of the Free State and in 1937 he introduced a new constitution which was to make Ireland a completely independent nation. Article two of the constitution claims the whole island of Ireland as national territory. This claim, although since repealed, is a particular irritation to Unionists.

Sectarian violence in Belfast resembled thereafter the activity of the current 1969 round. Catholics were attacked by Protestant mobs; security forces, if they did anything, sided with the Protestants. The present campaign of violence has been the most enduring and the most savage resulting in the death of 2,500 people with another 27,000 suffering serious injury. In order to put these statistics into perspective it must be remembered that the population of Northern Ireland comprises only one and a half million people. Had these deadly events occurred on the mainland of the United Kingdom, the corresponding figures would have been 87,000 killed and 940,000 injured.<sup>11</sup>

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<sup>11</sup>John Cushnahan, Unpublished Article (for the Commonwealth Parliamentary Association), Belfast, April 1987.

### III. THE OPPOSING FORCES

During a visit in April-May 1987 to Great Britain and Northern Ireland to conduct research for this thesis, I was permitted by the British government, along with other members of my research group, access to Lon Lartin and Maze prisons. The following are my impressions after interviewing loyalist and nationalist prisoners in the Maze prison H-blocks.<sup>1</sup>

#### A. THE H-BLOCKS, 2 MAY 1987

The prison is yet another hallowed symbol in the Irish struggle against the British. Kilmainham Jail in Dublin, site of internment and execution for a long line of Irish rebels, was restored in 1960 as a national monument by veterans of the 1916 uprising. In 1981 the Provisional I.R.A. received world attention as 10 men fasted to death in support of their demand to be treated as political prisoners. Prison is an expected fact of life for an I.R.A. volunteer. Their Loyalist counterparts, however, were relatively free of the threat of internment until 1973 when the brutal sectarian murders could no longer be overlooked by the authorities.

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<sup>1</sup>The Maze prison H-blocks are the prison cell buildings which are constructed in the form of an H, thus the name, H-block.

A visit to the H-blocks in the Maze prison today (still called by its former name of Long Kesh by the Nationalists) reveals a modern high security prison that appears to be inescapable. Yet on 22 September 1983 38 I.R.A. prisoners broke out, 12 of whom remain at large today. The prison population is separated into those in prior to 1976 and those after, then again divided into Loyalist and Republican prisoners and, lastly, divided into the particular group in which they claim membership.

Prisoners detained prior to 1976 are considered as "special category" detainees. They were given political status which enabled them to organize on a prisoner-of-war basis. These prisoners are billeted on a compound within the Maze where they live in Quonset huts akin to military barracks, are allowed a classroom and conduct classes, a gym, a workshop with tools for woodworking projects, parakeets and canaries, the wearing of their own clothes, more frequent visits and more liberal food packages than non-special category prisoners. Despite these privileges, the ambience is one of hopelessness. These men are in prison for life.

After March 1976, those convicted of terrorist crimes serve their sentences in the prison H-blocks. Here prisoners live in cells but are permitted to wear their own clothes. Prison work is not available. Most prisoners are between 20 to 30 years of age, and almost without exception

have been sentenced to life terms. Loyalist and Republican prisoners were unanimous in their disgust towards the current British/Northern Irish political leadership. This, however, was where the similarities of the two populations ceased.

The cell walls of the Loyalist prisoner were adorned with pictures of women, most of them tasteless. Bookshelves contained relatively little reading material. Some kept novels, comic books and old letters, but almost without exception, educational and intellectual texts were not to be found. I asked a young twenty-three year old Loyalist prisoner, who had served five years of his life sentence for murder, "What would you like to do with your life if you could be free again?" His reply was that he would "like to learn a trade, be a builder, or something similar to that."

When I asked a Republican prisoner the same question, there was no hesitation before his reply, "Well, the way I see it, I wouldn't like to do anything until we get rid of this occupying power, you know, get the Brits out." The short term objective of the P.I.R.A.--"Brits Out"! The long term objective--a Democratic Socialist Republic.

Prison cells of the Republican prisoners are quite different from those of their Loyalist counterparts. Irish history texts, Marx-Engels readers and Third-World revolutionary writings adorn the bookshelves. Walls are decorated with snap-shots of relatives, wives, Celtic

designs and pictures of the Irish landscape. There is a noticeable absence of Catholic religious symbols. Although membership in the I.R.A. does not mean automatic excommunication from the Church, most of the Republican prisoners seem to have rejected Catholicism.

#### B. THE IRISH REPUBLICAN ARMY

A new recruit into the Provisional I.R.A. is given a complete indoctrination from the "Green Book"<sup>2</sup> to give the recruit the ability to withstand outside pressures to inform and constantly keep the I.R.A.'s political goals in mind. Direct lineal succession of the P.I.R.A. is traced to the Provisional Government of 1916, the first Dail of 1919 and the second Dail of 1921. The Dail had declared in 1921 that if enemy action reduced its ranks to a minimum, the remaining deputies should turn over the executive powers to the Army of the Republic, which would then constitute itself as a Provisional Government. When the Dail overwhelmingly accepted the Treaty in 1922, the I.R.A. withdrew its allegiance, recognizing the minority in opposition as the "final custodians to the Republic." When a veteran of the 1916 Uprising was asked his opinion of the present P.I.R.A.,

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<sup>2</sup>The Green Book refers to the I.R.A. plan of action developed after the three-day and seven-day detention orders were so successful at breaking volunteers. See Tim Pat Cogan, The I.R.A., 10th Ed. (Glasgow: William Collins Sons & Co., 1987), p. 679.

the answer was a short, curt, "Disgusting. And they have the nerve to claim heritage in the original I.R.A."<sup>3</sup>

Eamond de Valera had been among the minority of the Dail representatives who rejected the 1921 Treaty which partitioned the six northern counties from the remainder of Ireland. But after he came to power, despite his republicanism, de Valera consistently pursued a policy of opposing the physical-force tradition. He initiated legislation in 1939 after a continued period of I.R.A. violence to enable the government to intern members of the I.R.A. without trial. Earlier, in 1936, the I.R.A. had been declared an illegal organization by the Irish Government.

The I.R.A. organization particularly lent itself to classic guerrilla warfare. It adopted three main tactics which were easily implemented by comparatively few people with relatively simple equipment. The first tactic was the planting of bombs on fixed targets, including government buildings, the economic and communications infrastructure, police barracks and military installations. The second was the assassination of individual security-force personnel, particularly those recruited locally. The third tactic involved larger scale attacks on security forces, either by ambush or against police barracks. The goal of these

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<sup>3</sup>Veteran of the 1916 Uprising, interview held during the 71st Anniversary Ceremony of the Execution of the 1916 Rebels, Kilmainham Jail, Dublin, Ireland, 3 May, 1987.

tactics was to expel the British from the North and unite the island into 32 counties.

Consistent with past experience, every I.R.A. campaign failed to achieve the goal of unity with the South. Each defeat produced a new martyr to rally around and support for the I.R.A. ebbed between the traditional support of nationalism and disgust for the seemingly endless violence. By the mid-1960s, support for the I.R.A. had all but disappeared. Civil Rights' movements in the United States, however, sparked a new awareness within the Catholic minority in Northern Ireland. This minority began peaceful demonstrations in hopes of bringing attention to the inequities between Catholics and Protestants in Northern Ireland. These protest marches were at first peaceful and some gains were made. But in 1969, violence broke out in the Bogside area of Derry (Londonderry) which led to the army being put on the streets to help the Royal Ulster Constabulary (R.U.C.) maintain order.

By 1969, the majority of the I.R.A. now favored political action as opposed to violence. The plan was to put up candidates for election in Dublin, Belfast, and London on a leftist, broadly Marxist policy. This was a break with previous I.R.A. and Sinn Fein policy which had traditionally regarded all existing parliaments as irrelevant to the struggle for power. At the Dublin conference of Sinn Fein in January 1970, this new approach



On 29 May 1972, the O.I.R.A. declared a ceasefire. Since the P.I.R.A. was responsible for the overwhelming majority of shootings and bombings, this truce had little effect on the level of violence. Later, on 26 June the P.I.R.A. also called a truce. Its leadership was secretly flown to London by the R.A.F.<sup>7</sup> for a discussion with British representatives. These discussions yielded no concessions from either side, but the truce was not withdrawn. This peace was very short-lived however as the P.I.R.A. accused the British Army of breaking the truce on 9 July 1972. The Provos renewed their campaign of terror. In contrast, with a few exceptions of occasional conflict with the P.I.R.A., the O.I.R.A. has successfully abandoned its policies of armed action for those of political action.

Escalating violence brought about the collapse of the Northern Irish Parliament at Stormont and direct rule from Westminster was introduced. This was seen as an interim achievement by the P.I.R.A. The Provos promulgated a Eire Nua (New Ireland)<sup>8</sup> as the final goal of their method. This Eire Nua declaration included the non-negotiable demand that the British government declare its intent to withdraw from the North. Ireland unfree, claim the Provos, would never be at peace.

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<sup>7</sup>Royal Air Force.

<sup>8</sup>Sean MacStaiofain, Chief of Staff, Provisional I.R.A., Eire Nua, Kevin Street, Dublin, 28 June 1972.

The Strategy is generally as follows:

- 1) To conduct a war of attrition against enemy personnel which is aimed at causing as many casualties and deaths as possible so as to create a demand from their people at home for British withdrawal.
- 2) To conduct a bombing campaign aimed at making the enemy's financial interest in Northern Ireland unprofitable while at the same time curbing long term financial investment in the country.
- 3) To make the six counties as at present and for the past several years ungovernable except by colonial military rule.
- 4) To sustain the war and gain support for its ends by national and international propoganda and publicity campaigns.
- 5) To defend the war of liberation by punishing criminals, collaborators and informers.<sup>9</sup>

Eradication of the I.R.A. is not possible now or in the near future. Social-economic conditions in the Catholic community and government errors, be it under-reactions or over-reactions to the situation, has created a steady flow of support to the more radical P.I.R.A. The Provos have the capability to create a crisis unexpectedly. While they cannot strike a decisive blow to the security forces to achieve their objective, neither can the British eradicate them militarily.

#### C. THE PROTESTANT PARAMILITARIES

There are about forty illegal Loyalist paramilitary groups. The overlapping membership, fragmentation and names

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<sup>9</sup>Tim Pat Cogan, The IRA, 10th Ed. (Glasgow: William Collins and Sons & Co., 1987), p. 693.

of convenience make it more difficult to distinguish the different Protestant Paramilitaries in comparison to the Catholic I.R.A. The largest is the Ulster Defense Association (U.D.A.) consisting at its peak in 1972-1974 of about 50,000 members, although only a few were involved in sectarian killing. It was formed to protect Protestant areas from I.R.A. violence. The U.D.A. was successful in forcing the government into taking action against Republican No-Go (i.e., do not enter) areas previously off limits to the security forces.

The most deadly offshoot of the U.D.A. is the Ulster Freedom Fighters (U.F.F.). This group has claimed responsibility for many of the sectarian murders and was proscribed by the government in 1973, while, in contrast, the U.D.A. remained a legal organization. As Republican violence declined, so did membership of the U.D.A. By 1977, the numbers were down to about 10,000.<sup>10</sup>

The Ulster Volunteer Force (U.V.F.) is a particularly brutal Protestant paramilitary. One particular U.V.F. unit from West Belfast would abduct its Catholic victims by car and carry out the assassination with meat cleavers. The gang became known as the Shankill Butchers. A series of arrests in 1977 neutralized the U.V.F., and it was forced to declare a ceasefire out of necessity rather than by

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<sup>10</sup>Jeffery, Northern Ireland, pp. 83-85.

choice.<sup>11</sup> The Red Hand Commandos (R.H.C.), a small but violent organization that emerged in 1972, merged with the U.V.F. in 1974.

Protestant paramilitaries do not enjoy the same type of close-knit support from the Orange (Protestant) community that the P.I.R.A. gets from the Green (Catholic). The Protestant community suffers to a much larger extent from intimidation and protection racketeering at the hands of its own extremists. The gap between the paramilitary and his community, while exaggerated by the means employed, narrows at the ends sought. One of the goals which the UDA espouses--an independent state on the Dutch model--is religious apartheid. This plan is a popular solution in the more hard-line Loyalist areas, and it is not so completely rejected as one would expect in Catholic areas. The Provo plan for an autonomous Protestant enclave within a 32 county Republic is a solution that is generally detested by Loyalists.<sup>12</sup>

#### D. THE COUNTER-TERRORIST FORCES

Law enforcement authorities represent the cutting edge of the state's application of power. Enforcement policies not perceived as equitable will alienate the minority ethnic group and undermine government legitimacy more quickly than

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<sup>11</sup>Ibid.

<sup>12</sup>Deryla Murphy, A Place Apart (Devin, England: Old Greenwich, 1980), pp. 132-137.

perhaps any other areas of public policy.<sup>13</sup> Actual enforcement activity is the X-factor of a government's ability to control terrorist violence through anti-terrorism legislation. In the case of Northern Ireland, the Catholic minority views government security forces with great distrust, even hatred. Security forces are seen as an occupying power and considered as legitimate targets by the P.I.R.A. and other Nationalist splinter groups. This targetting has the effect of provoking over-reaction and brutal enforcement measures further perpetuating the alienation of the Catholic population.

The Royal Ulster Constabulary (R.U.C.) forms the core of the security forces in Northern Ireland. The British Army and Special Air Service (S.A.S.) function in support of R.U.C. efforts. This was not always the case. In 1969, the Constabulary was not prepared for nor could it effectively restore order in the violence of the Bogside Riots. The Stormont Government was at the end of its list of options for dealing with the situation politically when the Home Affairs Minister, Robert Porter, announced that the army would be brought into Londonderry. The action was approved by London, and the Home Secretary, James Callaghan, told Westminster MP's:

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<sup>13</sup>David E. Schmitt, "Conflict and Accommodation in Northern Ireland," Terrorism: An International Journal (Vol. 9, No. 3, 1987), p. 269.

The General Officer Commanding (G.O.C.) Northern Ireland has been instructed to take all necessary steps, acting impartially between citizen and citizen, to restore law and order. Troops will be withdrawn as soon as this is accomplished. This is a limited operation and during it the troops will remain in direct and exclusive control of the G.O.C., who will continue to be responsible to the United Kingdom Government. . . . The Ireland Act of 1949 affirms that neither Northern Ireland nor any part of it will in any event cease to be part of the United Kingdom without the consent of the Parliament of Northern Ireland, and the United Kingdom reaffirms the pledges previously given that this will remain the position so long as the people of Northern Ireland wish.<sup>14</sup>

At first the British Army was welcomed by the Catholic minority who had been brutalized by Protestant mobs. The R.U.C. and the auxiliary police, the B-Specials, more than ninety-five percent Protestant, had only worsened the situation. The Army deployed and the R.U.C. fell back. The role of the British Army was to stop the terrorists and create a political structure which would be acceptable to the population and allow the province to be governed normally; but how all this was to be done was not specifically spelled out. The Ministry of Defense had issued every soldier a "Yellow Card" containing detailed and rather complex instructions on the circumstances in which the troops on duty were permitted to open fire.<sup>15</sup> But in the confusion of the riots eighteen and nineteen year old

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<sup>14</sup>Desmond Hamill, Pig in the Middle, The Army in Northern Ireland, 1969-1984 (London: Methuen London, 1985), p. 7.

<sup>15</sup>Joseph W. Bishop, Jr., "Law in the Control of Terrorism and Insurrection: The British Laboratory Experience," Law and Contemporary Problems (Vol. 42, No. 2, Spring 1978), p. 179.

soldiers were bound to make errors in judgment. The Catholics, prodded by I.R.A. propaganda, were unforgiving. Soldiers who were once welcomed with sweets and tea were now sometimes offered sandwiches with ground glass in them. The "honeymoon" was over.

Two decades later, the British Army continues to patrol in Northern Ireland. Troop strength peaked in 1972 when over 21,000 British soldiers were assigned to the province. Over the past ten years the Army has kept between 13,000-15,000 regulars in Ulster. These are broken down into permanent garrison (resident) troops and roulement units which serve short four month tours. By 1984, the presence had been reduced to six resident and two roulement battalions. The units were organized as the 39th Brigade in Belfast, the 8th Brigade in Londonderry, and the 3rd Brigade along the border. The 1984 reduction also eliminated the 3rd Brigade Headquarters, but a troop presence is maintained. Ulster peace-keeping duty adversely affects the readiness of the British Army on the Rhine where up to seven battalions may be absent at a given time, but it is also used to the fullest extent for counter-insurgency training.<sup>16</sup>

The Ulster Defense Regiment is the locally recruited unit of the British Army. It replaced the B-Specials which

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<sup>16</sup>David C. Isby and Charles Kamps, Jr., Armies of NATO's Central Front (London: James Publishing, 1985), p. 182.

were disbanded as a result of its complicity with the Protestant mobs in the 1969 riots. The goal of the government was to form up a unit free from the religious bias that was a formally accepted way of life in the province. This ambition was not realized as former B-Specials joined en mass and Catholics who aspired to do so were ostracized in the unit and from their community. If that were not enough to discourage them from enlisting, they were tortured and assassinated by the P.I.R.A.

The unit is made up of 7,500 members including 2,200 full-time and 5,300 part-time. It is organized into 45 line and one headquarters companies making up 11 battalions which vary in strength from 400-1,000 personnel. Eight of the 11 battalions have their own security districts which cover over half of Ulster with 41 company posts.<sup>17</sup>

The R.U.C. has improved significantly over the last 18 years, increasing in size from a force of 3,500 members to 12,670 highly trained and equipped police. In 1976 the timing was thought right to bring the R.U.C. back to the front-line role of law enforcement and place the British Army in the support role. Sir Kenneth Newman, who had spent the previous three years laying the groundwork for the R.U.C. to take on the high-risk profile, was brought in as the new Chief Constable. He and the General Officer Commanding, Lieutenant-General Sir David House produced a

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<sup>17</sup>Ibid.



document known as the "Joint Directive." This detailed the 'how-to' of reversing the roles of the Army and police. This document directed that all Army activity be in response to police requirements.

The new security policy was called "Ulsterization" and despite pressure to bring in more troops as the I.R.A. successfully escalates crisis situations, the program has been consistently pursued. Casualty rates were shifted from the British Army to the R.U.C. and the U.D.R. Perhaps the most difficult period for the R.U.C. occurred during the 1981 Hunger Strikes. As each of the ten hunger strikers died, intensive rioting festered at the funerals. The R.U.C. did not withdraw from the front-line role entrusted it and relinquish control to the Army as it had in 1969.

The 1987 escalation of violence once again has seen the call for more troops in Ulster from the Province and Great Britain. In a special security debate in the House of Parliament on 6 May 1987, Tom King, the Secretary of State for Northern Ireland, announced that "More R.U.C. full-time reservists are to be recruited immediately to help in the fight against terrorism in Ulster," but again, consistent with past security policy, he did not cave in to demands for more troops. The policy of Ulsterization appears to be established into the near future.

The security forces of the Republic of Ireland play an important role in the efforts to curb I.R.A. terror. The

Irish Army and the police force (Gardai) have received much criticism from Loyalists who regard the Southern state as an I.R.A. safe-haven. But a closer look at the facts reveal otherwise. During the 1985-1986 fiscal year, the Irish Army, in cooperation with the police, provided 11,000 parties of various sizes for operational duties in the border area. Three "border" battalions deploy from eight permanent bases in the area, two of them with attached helicopter flight. The Irish Army's other eight infantry battalions are regularly rotated in support and provided 1,500 patrols and 9,500 checkpoints in that same year. The small Irish Navy has intercepted various attempts to import arms into the Republic by sea. The spillover of violence into the South manifested in a series of armed robberies, assassinations, and bombings have made the Republic painfully aware that the 'Troubles' are not just a problem for Northern Ireland.<sup>18</sup>

#### E. MORALE; THE INTANGIBLE EDGE

The confidence of the I.R.A. is reinforced through the ability to carry-on a successful campaign and hit big marks such as Lord Justice Maurice Gibson, the second highest ranking judge in Northern Ireland.<sup>19</sup> While these terror

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<sup>18</sup>Adrian J. English, "The Irish Republic's Security Effort," Janes Defence Weekly, 27 September 1986, p. 673.

<sup>19</sup>Lord Justice Maurice Gibson, and his wife, Cecily, were murdered in a bomb blast when returning from a holiday trip on 25 April 1987. Although the I.R.A. had recent

campaigns are condemned from all Northern Irish political and social institutions, save Sinn Fein, from the Irish government, and from the United States, there exists a tiny Nationalist minority of hardcore radicals throughout which condones the murders as justified in the struggle against British colonial rule. From this minority the I.R.A. draws support directly as new volunteers, indirectly as support volunteers and sympathizers and internationally with political<sup>20</sup> and financial aid. The financial support drawn from Noraid<sup>21</sup> allows the I.R.A. to purchase sophisticated modern weapons lending credibility to it as a fighting force and enhancing morale.

The morale of the I.R.A. is severely undermined when an operation goes wrong as a result of an informer. The sentence for "talking" is death. The May 1987 ambush of an I.R.A. bombing attempt on a R.U.C. Station in Loughgall where eight I.R.A. members were killed as they drove an earthmover loaded with explosives toward the station was

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success in assassinating R.U.C. and U.D.R. members, Lord Gibson's murder attracted world headlines.

<sup>20</sup>Sinn Fein, the political wing of the I.R.A. polled 83,389 votes in the June 1987 British general election. This represents 11.4% of the total vote.

<sup>21</sup>Noraid (Irish Northern Aid), is an American organization established by Irish Republican immigrant Michale Flannery for the purpose of providing financial support to the I.R.A. The organization also acts as a political lobby. See, for example, James Adams, The Financing of Terror (New York: Simon and Schuster, 1986), pp. 131-155.

assessed as the largest I.R.A. disaster since the current round of violence ensued in 1969.<sup>22</sup> An I.R.A. defeat, however, can be quickly turned into a rallying point around which new martyrs are produced to gain support from the nationalist community.

The morale of the Royal Ulster Constabulary is an item of constant debate. The circumstances of terrorist violence dictate support by the British Army and the R.U.C. cannot function without it. Although community leaders loudly proclaim their support for the R.U.C., the constabulary must police in a community where they have little if any actual support from the local population.

Security force activity is ten times higher in Catholic areas than Protestant, and Loyalists regard the police as their legitimate military arm whose job it is to dominate Catholics. Distrust of the R.U.C. by Catholics, and the Loyalist fear of no impartiality of treatment from the police accounts for the undermining of morale and ineffectiveness in controlling violence. London Chief Commissioner, Robert Mark, stated: "Police depend entirely for their successful operation on their acceptability to the

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<sup>22</sup>On 8 May 1987 two I.R.A. units were ambushed in an attempt to blow up a R.U.C. station in the border town of Loughgall. The Sinn Fein spokesman stated that several members of the operation had escaped. He claimed that they witnessed their colleagues being shot on the ground after being captured. The R.U.C. denied the Sinn Fein claims.

community they serve, and this, in turn, depends entirely on their accountability for their actions."<sup>23</sup>

Police interrogation methods were investigated after 1979 when the rate of confessions while in police custody rose in direct proportion to the number of complaints of ill treatment from those in custody. Judge Harry Bennett QC,<sup>24</sup> an English Crown Judge, was commissioned to head an inquiry into the allegations. In publishing his committee's findings, the report mentioned that there had been cases where medical evidence had been produced concerning injuries sustained in police custody that were not self-inflicted. The United States Congress reacted to the report by placing an embargo on the sale of 6,000 .357 revolvers to the R.U.C. Police morale dropped, as did the rate of convictions.

When the I.R.A. conducts a successful campaign, i.e., a sustained period of crisis events without capture and conviction, the R.U.C. morale again suffers and the constabulary is prodded into a reactive mode. How the police act is exemplified by the leadership of the Chief Constable, first in Sir Kenneth Newman who became known for his even temper in crisis and triumph alike,<sup>25</sup> and then in Sir John Herman. At the funeral of Lord Justice Gibson--a

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<sup>23</sup>Mark Monday Collection, "Northern Ireland Has a Police Problem," 5 March 1975 (Stanford: Hoover Archives), Box III, H007.

<sup>24</sup>Queen's Council.

<sup>25</sup>Hamill, Piq, p. 218.

security nightmare--Sir John could be seen walking calmly among his men, the epitome of reassurance.<sup>26</sup>

Competition between the R.U.C. and the British Army has flared up at points and exposure in the press brings the cooperation efforts of the security forces into question. In 1979 when Lord Mountbatten was murdered and 18 British soldiers killed in one engagement the Army briefed Prime Minister Thatcher that it would prefer to have the control of security returned to them. The Army had neither confidence that the police could manage on their own nor in the triumvirate committee system consisting of Lt. Gen. Creasy, Chief Constable Newman, and Secretary of State Atkins for liaison between the forces. According to the Army, the Catholics would rather see British soldiers doing the job (of policing) than the Protestant policemen.<sup>27</sup>

The British Army's assessment was questionable. Two cases of British soldiers accused of manslaughter were brought to trial. Each case was characterized by a wide discrepancy in testimony from witnesses who were Catholic bystanders and British soldiers. Someone was lying, and the prosecution failed to prove either case beyond a reasonable doubt. Both defendants were acquitted. Needless to say, the acquittals did nothing to improve morale between the

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<sup>26</sup>"Blunt Talker at the Sharp End," The Times (London), 30 April 1987, p. 12.

<sup>27</sup>"Who's in Charge in Ulster--the Soldiers or the Police?" The Economist, 15 September 1979, p. 38.

Catholics and the security forces. The civilians felt themselves oppressed by a ruthless soldiery; the soldiers could see no reason to expose themselves to danger in order to safeguard the lives of people who might or might not be innocent. There is no easy solution to the problem of punishing lawless behavior by the security forces trying to cope with guerrillas amid a hostile civilian population.<sup>28</sup>

One of the stated objectives of the P.I.R.A. is to undermine the morale of the security forces through a war of attrition inflicting as many casualties as possible and creating a lack of will among the British people to continue the troop presence in Northern Ireland. But the policy of Ulsterization has served to bring the P.I.R.A. up against other Irishmen in the U.D.R. and R.U.C. who have equal determination not to be defeated. Tom King, Northern Ireland Secretary of State, opened his address to the House of Commons on 6 May 1987 by underscoring the fact that the members of the I.R.A. had failed in all their objectives:

They had failed to undermine the moral of the R.U.C. They had failed to spread disaffection in the British Army or create a reluctance to serve in Northern Ireland. They have failed in their campaign for international support; abroad they were seen as "an unholy mismatch" of racketeers and Marxist terrorists.

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<sup>28</sup>Bishop, "Control of Terrorism," p. 182.

#### IV. EMERGENCY LEGISLATION

Terrorism incites public outrage; public outrage motivates political reaction; political reaction results in ill-conceived emergency legislation which perpetuates violence rather than putting an end to it. This appears to be the vicious circle of political action taken in response to I.R.A. violence. Successive governments in London, Dublin and Belfast have enacted some of the most severe legislation known to free democracies in an effort to deal with I.R.A. terrorism.

Terrorism is especially difficult to combat in the free world; that is no secret. The basic human rights and civil liberties taken for granted in the West shield a terrorist from detection. When emergency measures are authorized, these basic rights are the first victims. There is no doubt that these measures have been effective; terrorists in jail, arms and explosive caches found, etc., all can be empirically measured. What is not so easily calculated is the violence provoked through draconian enforcement. The I.R.A. thrives on the propaganda value of the laws instituted to deal with them which undermine civil liberties. The security forces often find themselves in a no-win situation when they enforce the law.



What are the options open to the government and why have previous actions failed to eradicate the I.R.A.? The first portion of the question will be dealt with by examining past legislation established. The second part of the question is not so simple. Mistakes have been made, the primary one probably being an attempt to resolve the situation by overemphasis on security. The great emphasis on security has tended to obscure the fundamental problem, of why the I.R.A. exists, and thus has probably exacerbated conditions.

Since the recognition that problems in Northern Ireland could not be solved through increased security, progress has been made in reducing extremism in the two communities. Housing, governmental representation, and employment are important parts of the problems. A voice in government and new with fair methods of allocation have both been areas of marked improvement for the Catholic minority. High unemployment in Northern Ireland has inhibited progress in fair employment practices. Employers, for example, are not likely to fire Protestant employees so that Catholics can be employed in their place. Increased employment is the order of the day, but Northern Ireland must compete for new investment with Ireland, Scotland, and the North of England all of which also suffer high unemployment rates.

A. THE CIVIL AUTHORITIES (SPECIAL POWERS) ACT, 1922

The Civil Authorities (Special Powers) Act was the first piece of emergency legislation introduced into Northern

Ireland after the partition. The Act enabled the Minister of Home Affairs "to take all such steps necessary for preserving the peace." It was renewed annually until 1933 when it was superseded by a permanent act. The common abuses of power were often carried out under the authority of the Act's provisions. The draconian measures were used as a model by the South African Government, another similar democracy, when enacting its own emergency legislation.<sup>1</sup>

Under the provisions of the Act, the police were authorized to search, arrest, and imprison without warrant, charge, or trial any person of their choosing. The security authorities could suspend at will any and all of a citizen's basic rights, from habeas corpus to freedom of the press. An individual could be incarcerated indefinitely without appeal or a right to know the reasons for his detention. The police did not have to reveal the fact that they were holding a suspect for 48 hours, and during that time the person could be interrogated without the right to a lawyer. There were no legal safeguards for those arrested on the suspicion of acting, having acted, or being about to act "contrary to the peace."<sup>2</sup> In Northern Ireland, the Catholic

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<sup>1</sup>Keith Jeffery, Northern Ireland, the Divided Province (New York: Crescent Books, 1985), p. 44.

<sup>2</sup>Gary McEoin, Northern Ireland, Captive of History (New York: Holt, Rinehart and Winston, 1974), p. 61.

minority was seen by the Protestant majority as the internal enemy without guaranteed constitutional rights.<sup>3</sup>

In 1936, the National Council for Civil Liberties published the report of a Special Commission of Inquiry into the Special Powers Act. That report concluded:

First, that through the operation of the Special Powers Acts contempt has been begotten for the representative institutions of government.

Second, that through the use of Special Powers individual liberty is no longer protected by law, but is at the arbitrary disposition of the Executive. This abrogation of the rule of law has been so practised as to bring the freedom of the subject into contempt.

Third, that the Northern Irish Government has used Special Powers toward securing the domination of one particular political faction and, at the same time, towards curtailing the lawful activities of its opponents. The driving of legitimate movements underground into illegality, the intimidating or branding as law-breakers of their adherents, however innocent of crime, has tended to encourage violence and bigotry on the part of Government's supporters as well as to beget in its opponents an intolerance of the "law and order" thus maintained. The Government's policy is thus driving its opponents into ways of extremists.<sup>4</sup>

Despite attacks from the National Council of Civil Liberties and other legitimate moderate groups throughout Ireland, Northern Ireland, and Great Britain the Special Powers Act endured until 1972 when it was replaced by an Order of Council. This was superceded in turn by the

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<sup>3</sup>Jeffery, Northern Ireland, p. 44.

<sup>4</sup>Catherine Scorer, Sarah Spencer, and Patricia Hewitt, The New Prevention of Terrorism Act: A Case for Repeal (London: Yale Press, 1985), p. vii.

Northern Ireland (Emergency Provisions) Act in 1973 which will be examined later in this chapter.

B. THE OFFENSES AGAINST THE STATE ACT, 1939

The Dublin government was not immune to the violent antics of the I.R.A. The anti-treaty dissenters prompted the Dail Eireann to first invoke martial law and then a series of measures similar to the Special Powers Act. Eamon de Valera had, after renouncing the 'physical-force' tradition of Republicanism in 1926, reemerged in 1932 as the leader of the government. In 1936 he declared the I.R.A. an illegal organization<sup>5</sup> and in 1939 he put through the Offenses Against the State Act.

Although de Valera is considered to be a radical Republican, he was not enough so for the I.R.A. While de Valera had set about a public relations campaign in Great Britain his case for an All-Ireland Parliament in 1939, the I.R.A. had also carried a campaign to Britain--a bombing campaign. An ultimatum had been served on the British Foreign Secretary, Lord Halifax, demanding the withdrawal of British troops from Northern Ireland. When this demand was not met in the specified period, bombs began to explode in a number of public places in England. Five people were killed and about 70 others injured in one explosion in Coventry. The bombs blew sky-high any hopes which de Valera had of

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<sup>5</sup>Jeffery, Northern Ireland, p. 25.

convincing British public opinion of the justice of the Irish Cause.<sup>6</sup>

The Irish government was the first to act passing the Offenses Act on 14 June 1939. The British government followed this up shortly afterwards with the Prevention of Violence (Temporary Provisions) Bill. The Offenses Against the State Act set up military tribunals and gave the government the power to issue a suppression order against anyone who 'raises or maintains a military or armed force.' The Act stated:

Every person who usurps or unlawfully exercises any function of Government whether by setting up, maintaining or taking part in any way in a body of persons purporting to be a Government or by any other action or conduct whatsoever shall be guilty of felony and shall be liable in a conviction thereof to suffer penal servitude for a term not exceeding ten years or to imprisonment for a term not exceeding two years.<sup>7</sup>

C. THE PREVENTION OF VIOLENCE (TEMPORARY PROVISIONS) BILL, 1939

Until the I.R.A. had commenced and was substantially into the bombing campaign, the British government had not proscribed the I.R.A. The police had been collaring I.R.A. agents under the normal provisions of the law. On 24 July the Home Secretary, Sir Samuel Hoare, introduced the Prevention of Violence (Temporary Provisions) Bill into the

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<sup>6</sup>The Earl of Longford and Thomas P. O'Neill, Eamon de Valera, A Biography (Boston: Houghton Mifflin Co., 1971), p. 342.

<sup>7</sup>Tim Pat Coogan, The I.R.A., 10th ed., (Glasgow: William Collins & Sons, 1987), p. 168.

House of Commons. Any opposition to the Bill was extinguished with another bomb explosion on 26 July in which a Scottish doctor lost both his legs.

The Prevention of Violence Bill gave the Home Secretary the powers to issue expulsion orders against suspected persons living in England and to issue prohibition orders against suspects wishing to enter the country. The Bill stated that "in emergencies," search warrants were to be issued by police officers not below the rank of superintendent and the police could arrest and detain suspects for five days without warrants. This Bill is important because, combined with some of the provisions of the Northern Ireland (Emergency Provisions) Bill, it makes up the controversial Prevention of Terrorism Act.

#### D. THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT, 1973

The Emergency Provisions Act was the result of recommendations made by Lord Diplock who was commissioned by Whitehall<sup>8</sup> to investigate the law and order situation in Northern Ireland. Lord Diplock came to the Province to get a 'feel for' what was going on. He travelled across the country, talked with many of the people involved, and at one point even watched a riot. British soldiers had been performing as police since their introduction in 1969 and Lord Diplock wanted to find out exactly what sort of

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<sup>8</sup>The official offices of the British Government.

difficulties the soldiers were facing in the execution of their duties as they tried to control the violence. Soldiers were not trained as policemen, which often seemed to be merely a technicality--like the use of the wrong words--when a "known" terrorist was allowed to escape justice because of improper arrest procedures.<sup>9</sup>

The Diplock Report or Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland (Cmd. 5259 March 1973 London) as officially published by H.M.S.O. (Her Majesty's Stationary Office) identified three factors hindering the effective use of the courts in this regard: the intimidation of witnesses; the danger of perverse acquittals by biased juries and the legal technicalities on the admissibility of confessions and on proof of possession in firearms cases. The recommendations included suspending the right to trial by jury for certain indictable offenses and the introduction of amended rules on the admissibility of confessions and the onus of proof in firearms cases. It advocated greater freedom to soldiers for powers of arrest<sup>10</sup> and restricted the conditions under which bail could be granted. The I.R.A., Cumann nam Ban (I.R.A. women's auxiliary), Fianna

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<sup>9</sup>Desmond Hamill, Pig in the Middle, The Army in Northern Ireland 1969-1984 (London: Methuen London, 1985), p. 130.

<sup>10</sup>Dermot P.J. Walsh, The Use and Abuse of Emergency Legislation in Northern Ireland (Nottingham: Russell Press, 1983), p. 11.

Eire (Soldiers of Ireland), Saor Eire (Free Ireland), Sinn Fein, and the Ulster Volunteer Force were proscribed.

These measures institutionalized the use of extraordinary powers and indicated how seriously the Unionist authorities took the threat of nationalist subversion. With amendments the Act continues the present emergency provisions and allows for renewal annually.

#### E. THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT

The I.R.A. brought a bombing campaign straight to Westminster's front door in 1973. More than 25 people were killed and about 400 wounded in a series of bombings brought to the British mainland. Most of the victims were innocent civilians; passers-by, tourists in the Tower of London, and people in pubs frequented by soldiers. The campaign culminated on 21 November 1974. Satchel charges planted in two pubs in Birmingham, which were crammed with teenagers, killed 21 people and wounded many more.<sup>11</sup> Within a week, Parliament had passed the Prevention of Terrorism Act (P.T.A.). Had there been no bombs in Birmingham, presumably there would have been no Act.<sup>12</sup> Actual preparations for the P.T.A. had begun earlier, after the 1973 Old Bailey bombings. There had been several draft bills drawn up

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<sup>11</sup>Coogan, The I.R.A., p. 679.

<sup>12</sup>Harry Street, "The Prevention of Terrorism (Temporary Provision) Act 1974," Criminal Law Review (U.K.) (Vol. 21, April 1975), p. 192.



similar to the 1939 Prevention of Violence Bill. The new bill proscribed the I.R.A., restricted movement of Irish people from Ireland and Northern Ireland into the United Kingdom, and later, Exclusion Orders were added to the list of proposals being considered by the Government.<sup>13</sup>

The P.T.A. passed through Parliament with little opposition and empowered the government to exclude suspected terrorists from the United Kingdom at the discretion of the Secretary of State; the police were authorized to hold suspects for up to seven days without charge for questioning; and the I.R.A. was declared an illegal organization. Membership in the I.R.A. was punishable by five years in prison and a fine. An exclusion order had no court of appeal except to the Secretary of State. Those who challenged exclusion orders sometimes were held in custody for periods exceeding three weeks. The seven-day custody period for questioning could also be, and often was, extended.

The P.T.A. became an effective tool in the effort to curb terrorism. Suspects spent detention periods undergoing heavy interrogation, exposed safe houses, and frustrated plans for future terrorism. The I.R.A. was forced to change its mode of operation as a result. A captured I.R.A. document states the exact nature of the problem:

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<sup>13</sup>Scorer, Prevention of Terrorism Act, p. 1.

The three-day and seven-day detention orders are breaking volunteers, and it is the Republican Army's fault for not indoctrinating volunteers with the psychological strength to resist interrogation.<sup>14</sup>

The effect on the Irish community in Britain, 750,000 by British government estimates, eight million when the American definition of "Irishness" is applied,<sup>15</sup> was devastating. An editorial in the London Times on 23 November 1974 epitomized British outrage at the time of the Birmingham bombings:

This is an Act of War; there are times when the emotional response to a public event is also the soundest one. The natural response to the murders in Birmingham is one of anger and determination . . . only the most effective countermeasure will satisfy public opinion. . . .<sup>16</sup>

Much legitimate political activity in the Irish community was silenced through fear and intimidation. Quasi-legitimate political groups such as Sinn Fein, Clann na hEireann, and the Workers' Party were banned. The first

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<sup>14</sup>Coogan, The I.R.A., p. 679.

<sup>15</sup>The American definition of "Irishness" is to have one or more grandparents from Ireland. In some parts of the country, Boston for example, fifth or sixth generation Americans still consider themselves Irish. Dr. Mary McDevitt, President of the San Francisco Irish Forum said best:

As an Irish-American I went to Britain looking for my counterpart, the Irish-Britisher. Even if a term with a less harsh sound could be invented, the concept of love and loyalty to two cultures and two countries does not exist. You are "Irish in Britain" for many generations until you become "British with distinct Irish Ancestry."

<sup>16</sup>Roger Falipot, Britain's Military Strategy in Ireland, The Kitson Experiment (London: Zed Press, 1983), p. 165.

section of the P.T.A. made it an offense to collect money, make speeches and generally disseminate propaganda in favor of the Republican Movement. The objectives here were to remove public manifestations of the existence of and support for terrorist organizations rather than to prevent terrorism. The Act created a new concept of moral complicity with terrorism which had spread since the case of the lawyer of the Red Army Faction, Klaus Croissant in West Germany; the imprisonment of Professor Negri in Italy because of his theoretical writings; and the journalist, Xavier Vanders' sentence of seven years imprisonment in Spain for publishing an interview with a policeman who named Spanish anti-Basque fascists, some of whom were later assassinated by the ETA-Militar.<sup>17</sup>

The P.T.A. was meant to be a six month temporary measure as the words Temporary Provisions were inserted parenthetically into its title. Six months later the Bill was renewed and still again six months later on 28 November 1975. In 1976, a new Prevention of Terrorism Bill amended the 1974 Act in three ways: a person served with an exclusion order was given an extension from 48 to 96 hours as the period in which to petition the Home Office with representations of why he/she should not be excluded; gave that person the right to a personal interview with a government nominee; and doubled the lifespan of the Act from

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<sup>17</sup>Ibid.

six months to one year. The P.T.A. was again renewable after that year for additional periods up to 12 months for as long as was considered necessary.

Another important change to the 1974 version of the P.T.A. made it an offense not to pass on information to police about terrorism. The provisions relating to financial and political support for the proscribed organizations were widened and exclusion orders were expanded to include exclusion from Northern Ireland back to Great Britain. Enoch Powell, Member of Parliament for the Northern Ireland Official Unionist Party, argued for more severe measures while more moderate members of parliament maintained that the Act was already a gross violation of individual civil liberties. Demands for compulsory identification cards and the reintroduction of hanging were tabled as well as the abolition of exclusion orders and to give the Judge's Rules statutory force.

The Prevention of Terrorism Act has undergone many revisions since 1974--over 10 by Parliament and two by independent investigations: the Lord Shackleton Inquiry of 1978 and the Lord Jellicoe Report of 1983.<sup>18</sup> Because the limitations placed on each of these independent reviews, there were few innovative recommendations or conclusions

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<sup>18</sup>Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976 (The Shackleton Report, 1978; Cmnd. 7324) and (The Jellicoe Report, 1983; Cmnd. 8803).

resulting from them. The bulk of the P.T.A. legislation has survived unscathed. The commissions of Lord Shackleton and Lord Jellicoe incorporated the assumption that "There is continuing need for legislation against terrorism..." and the Review "...ought not to focus on whether or not we need the Act."<sup>19</sup>

Lord Shackleton's recommendations are summarized as follows:

- Statistics on the operations of the Act should be published quarterly;
- Exclusion order cases should be reviewed with the possibility of the orders being revoked;
- The government should reconsider its policy on financial assistance to relatives of excluded persons;
- Section 11 (withholding information) should be allowed to lapse;
- Improvements should be made in the diet and comfort of detainees;
- The Judges' Rules should be uniformly followed;
- Fullest possible records of interviews should be kept;
- Detention at ports should be for the same maximum period as elsewhere, i.e., seven days, not 12.<sup>20</sup>

Most of his recommendations were incorporated with the exception of allowing Section 11 to lapse and providing financial assistance to relatives of excluded persons. When the P.T.A. came up for its annual review in 1982, the Labor

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<sup>19</sup>C.P. Walker, "Reports of Committees," The Modern Law Review (Vol. 46; July 1983), p. 484.

<sup>20</sup>Scorer, Prevention of Terrorism, p. 3.

Party in opposition abstained from the vote to renew the Act. As a consequence, Lord Jellicoe was commissioned to carry on a further study of the P.T.A.

Lord Jellicoe, former S.A.S. officer and ex-head of the Secret National Security Commission, made 59 total recommendations of which only six were rejected in whole or part.<sup>21</sup> The report recognized that the ultimate test of the performance of a terrorist campaign is the measure of support which it commands. Counter-terrorist strategy must also maintain public approval. Three types of limiting principles were proposed. The first was that the traditions of the legal system should be respected and "normal" law should be applied unless ineffective. Second, that even if special legislation is justified, it should nevertheless be subject to measures which guard against its unwarranted introduction and exercise. Traditional liberties should be respected as far as possible. The third limiting principle was, since the foregoing considerations are secured by the European Convention for Human Rights and Fundamental Freedoms, its requirements merit close attention.<sup>22</sup>

The report went on to expand the powers of arrest and detention and extend these powers to cover those suspected of involvement in international terrorism. Ironically, one

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<sup>21</sup>Clive Walker, "Legislation," The Modern Law Review (Vol. 47; November 1984), p. 712.

<sup>22</sup>Walker, "Reports of Committees," p. 485.

of the recommendations not adopted was the removal of (Temporary Provisions) from the title of the Act. The Prevention of Violence (Temporary Provisions) Act had lasted from 1939 through 1954, and the Jellicoe Report indicated that the epithet of "Temporary Provisions" had a hollow ring to it. Overall, the implementation of the Jellicoe Report's recommendations improved the structure and functioning of the legislation for those entrusted with the responsibility of enforcement. Where it failed, delivering its own hollow epithet, was in making specific recommendations on its own limiting principles. The guarantee of respect as far as possible for civil liberties was left to the arbitrary secret decision-making of police, civil servants, and a minister on evidence which might not withstand the scrutiny of a court of law.

Catherine Scorer, Sarah Spencer, and Patricia Hewitt, in their review of the Prevention of Terrorism Acts, stated that:<sup>23</sup>

Supporters of the Act argue that civil liberties must be sacrificed to deal with those suspected of terrorism. They are wrong. First, it is not necessary to introduce excessive powers which infringe civil liberties when the ordinary criminal law provides the police with wide powers to arrest and detention of anyone suspected of a terrorist offense. The small percentage of those arrested under the Act and later charged with a criminal offense could have been made under normal, preexisting police powers, and brought before a court in the usual way. Secondly, it is just as important that the rights of someone suspected of a terrorist offense are respected as those of someone suspected of a non-political offense. Given the

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<sup>23</sup>Scorer, Prevention of Terrorism, p. 10.

overwhelming horror which juries and judges feel when dealing with terrorist crimes, safeguards for the suspect are arguably even more important than in lesser cases.

The partly counter-productive nature of draconian legislation partially bears out this thesis, but a free democracy must have some visible measure of combating terrorism. This is not to say that the P.T.A. is a palladium of legitimacy, but when an armed minority attempts to impose its will on the majority of a community, extraordinary measures are justified. These measures may be essentially weak, the less harsh, the less counter-productive, yet the end product can demonstrate "curing," government action to protect that majority of the citizens which have elected that government to serve them.

Civil libertarians do have a valid claim that the rights of someone suspected of a terrorist offense must be protected. Laws are only as good as the people charged with the responsibility of enforcing them. Unfortunately, these people sometimes make mistakes as the presence of 10 innocent people in British prisons<sup>24</sup> confirms. The public

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<sup>24</sup>The innocent people in British prisons include the Birmingham Six (Johnny Walker, Paddy Hill, Dick McIlkenny, Hugh Callaghan, Bill Power, Gerry Hunter, convicted shortly after the Birmingham bombings on the basis of confessions extracted in a questionable manner from them and forensic evidence later proven to be inaccurate). Also are the Guildford Four (Carole Richardson, Patrick Armstrong, Paul Hill, and Gerald Conlon) also convicted on the basis of confessions derived from questionable interrogation techniques. When the actual Guildford bombers were later captured and admitted to the crime, the Guildford Four were not pardoned, or even given a chance for retrial. See, for instance, Chris Mullen, An Error in Judgement, The Case of



reaction of outrage to terrorist offenses may sadly pressure blind justice into a hasty, wrongful conviction. The dilemma for a democracy--what is the worst of the two evils; an innocent man in prison or guilty terrorist on the streets? The answer is that neither are acceptable. Police authorities must be totally committed to lawful, effective enforcement. Emergency legislation must be able to withstand careful scrutiny from the staunchest of civil libertarians and justify its existence with empirical data of results.

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the Birmingham Six (Longon: Chatto & Windus, 1986) and Robert Key, Trial and Error (London: Hamish Hamilton, 1986).

## V. THE ANGLO-IRISH AGREEMENT

If the I.R.A. are bombing and shooting because the British will not leave Ireland, why should it stop because Garret FitzGerald and John Hume tell the British they can stay?<sup>1</sup>

On November 15, 1986, former Prime Minister Garret FitzGerald of Ireland and Prime Minister Margaret Thatcher signed the Anglo-Irish Agreement at Hillsborough, Northern Ireland. The most significant items in the agreement were the Irish government's recognition of British sovereignty in the North and the British government granting Dublin a consultative voice in Ulster affairs. Hailed as a landmark of cooperation and compromise not previously exhibited in Anglo-Irish affairs, it has emerged uniquely as an issue that has united extreme and moderate Unionists against it. Simultaneously, the Treaty has lent subtle support to the Catholic nationalist community and increased its morale, the logic being that "If the Loyalists dislike it so much, it must not be all bad."<sup>2</sup>

### A. BACKGROUND TO THE ACCORD

Why was such an agreement necessary and what were the events which led to its realization? Terrorist violence in

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<sup>1</sup>Anthony Coughlan, Fooled Again? The Anglo-Irish Agreement and After (Dublin: The Mercier Press Limited, 1986), p. 7.

<sup>2</sup>Cardinal Tomas O'Fiach, interview, Armagh, Northern Ireland, 3 May 1987.

Northern Ireland has never been acceptable. For almost 20 years the British government has attempted to deal with the I.R.A. as a security problem. While this approach has maintained the status quo, the terrorists can not be defeated until their support has been extinguished, a goal requiring initiatives in addition to security. Security measures are highly visible and most always draw criticism from the Catholic nationalists as being unnecessarily harsh. This has resulted in a small number of extremists in the Nationalist community supporting the I.R.A. To terminate this support, something other than increased security measures were called for. The Irish government was called on to moderate its formal claim (Articles 2 and 3 of the Irish Constitution, a major cause of Unionist hostility to the Republic) to sovereignty over the whole island of Ireland. The British government was to reciprocate by allowing Dublin to put forward views and proposals on certain aspects of administration of the Province.

Out of these concessions the Anglo-Irish Agreement was born. The strategy was to gain the support of the Roman Catholic nationalists through the consultative role of the Irish Republic so that the I.R.A. would have its support undermined, violence would wane, and the new situation would pave the way for the moderates in the Loyalist community to emerge. I.R.A. violence gives Unionist extremists their narrow margin of legitimate existence just as violence

generated from the security forces lend a false sense of credibility to the existence of the I.R.A.

To trace the genesis of the Hillsborough Accord, the clock must be turned back to the political initiatives of the early 1970s. At the heart of each initiative were the same conditions promulgated by the Anglo-Irish Agreement: United Kingdom sovereignty over the North and a parallel Irish dimension--cooperation with the Republic.<sup>3</sup> The variance in this core issue has been the degree of participation from the different political parties in Northern Ireland. Exclusion combined with boycotts has resulted in the demise of each governmental endeavor towards power-sharing. Decisive representation from each community could not be realized.

In 1980 the Irish Prime Minister, Charles Haughey, and Margaret Thatcher agreed that regular Anglo-Irish summit meetings should be held, involving the two Heads of Government, in order to strengthen the unique relationship between the two sovereign states. These meetings evolved into the Anglo-Irish Intergovernmental Council and later, the establishment of the New Ireland Forum to examine the realities of a United Ireland. The Forum was made up of the four major Nationalist parties of all Ireland: Fianna Fail, Fine Gael, the Irish Labor Party and the Social Democratic

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<sup>3</sup>Sean Cronin, Washington's Irish Policy: 1916-1986 (Dublin: Anvil Books, 1987), p. 308.

and Labor Party (S.D.L.P.). The Unionist parties boycotted the proceedings and Sinn Fein, which had generated the whole initiative because of its electoral success at the expense of the S.D.L.P. moderates, was deliberately not invited.

The New Ireland Forum was therefore established in the summer of 1983 to find a new way in which "lasting peace and stability could be achieved in a New Ireland through the democratic process."<sup>4</sup> The findings were reported on May 2, 1984. Analysis of economic policy, the legal systems North and South, the cost of violence, the cost of the division of Ireland since 1920, and other related matters were included. The report defined three possible models for a New Ireland and most suggestions favored a unitary state governed from Dublin.

The personalities of the individuals involved must be taken into account to decipher how things evolved. John Hume, Member of Parliament and the leader of the S.D.L.P. was the primary catalyst of the initiative. Charles Haughey had been replaced by Garret FitzGerald and Margaret Thatcher was in her second term as Prime Minister of Great Britain. While Mr. Hume had been the architect, Mrs. Thatcher certainly had the final word as to the implementation of any of the recommendations. Dr. FitzGerald was more concerned that the talks be kept alive at all costs. The three

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<sup>4</sup>Kevin Boyle and Tom Hadden, Ireland, A Positive Proposal (Middlesex: Penguin Books, 1985), p. 21.

proposals which the Forum had made were for a unified Ireland, a confederation system, and joint authority. Unfortunately, before Irish television cameras, Mrs. Thatcher made it clear that none were acceptable. She stated:

I have made it quite clear, and so did Mr. Prior, when he was Secretary of State, that a unified Ireland was one thing that was out. A second solution was a confederation system: that was out. A third solution was joint authority: that is out.<sup>5</sup>

The United States had traditionally taken an impartial stance in Anglo-Irish affairs, but when Mrs. Thatcher dismissed the efforts of the Forum with her intransigent "out-out-out" comment, political pressure was exerted to find accommodation with Mr. Hume and Dr. FitzGerald. Her stance had damaged Garret FitzGerald politically and the moderate brand of S.D.L.P. nationalism was also losing out to the extremist Sinn Fein since the insensitive handling of the Hunger Strike issues by the Thatcher Administration. This is not to say Mrs. Thatcher was wrong in most assessments of most Irish issues, but her reputation for insensitivity undermined effective policymaking.

Irish and British top-level civil servants were commissioned to take another try at an agreement. Their efforts resulted in the Anglo-Irish Accord unveiled at Hillsborough Castle outside Belfast (thus dubbing it the

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<sup>5</sup>Tim Pat Coogan, The I.R.A., 10th Ed. (Glasgow: William Collins Sons & Co., 1987), p. 640. (author's emphasis)

Hillsborough Accord). In total, the 1985 Agreement contains 13 clauses aimed at working towards peace and stability. In addition to the Irish recognition of British sovereignty and British recognition of the "Irish dimension," both governments condemned I.R.A. terrorism and agreed to cooperate in security and related matters.

The international attention accorded to Northern Ireland is clearly apparent in the contributions to the International Fund as noted, for example, in the following clause of the Hillsborough Accord (Article 10a) that:<sup>6</sup>

The two Governments shall co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and shall consider the possibility of securing international support for this work.

As a result, the agreement to set up an International Fund for Ireland was signed by the Governments of Ireland and of the United Kingdom on 18 September 1986. A week later, on 26 September 1986, a trilateral agreement, to which the U.S. Government was also party, was signed, providing for the contribution by the U.S. of up to \$120 million over three years. Canada agreed to make available a contribution of up to ten million Canadian dollars over ten years. New Zealand promised a donation of NZ \$300,000, and the European Commission has been approached for a contribution from the European Community.

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<sup>6</sup>The text of the Anglo-Irish Agreement in its entirety is found in Appendix F.

## B. REACTIONS TO THE ACCORD: LOYALIST

The Unionist Party's response to the Agreement has simply been to boycott Westminster, wreck local government in Northern Ireland, and to take politics onto the streets. Despite their irresponsible behavior, the Unionists do accurately reflect the opposition of the Unionist community to the London-Dublin Accord. They have a legitimate cause for complaint about how the Agreement came into being and how it is being implemented. The consent of the people who live in Northern Ireland was neither sought nor given. Loyalists decry the Accord as a "stab in the back" by Westminster, a sellout to Republicanism leading to a British withdrawal from the Province and an eventual absorption into a United Catholic Ireland.

On 17 December, 1985 all 15 Unionist members of Parliament resigned their seats at Westminster, forcing subsequent by-elections on 23 January 1986 under the slogan, "Ulster says No." The Unionists lost one of their 15 seats to the moderate nationalist S.D.L.P. which had campaigned in support of the Accord. Sinn Fein had, like the Unionists, campaigned against the Hillsborough Accord, but for different reasons. Two-thirds of the Northern Nationalists voted to give a chance to "reconciliation and dialogue," with a hope of peace at the end of the road. That, however, requires Unionist consent which was withheld.<sup>7</sup>

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<sup>7</sup>Cronin, Irish Policy, p. 325.



The Unionist Parties produced no alternative set of political initiatives. The Ulster Defense Association (U.D.A.) and Sinn Fein have been first to venture forth with counter proposals. The U.D.A. document, entitled Common Sense, credits the Anglo-Irish Accord with two things: increasing disillusionment for Ulster Catholics in the prospect of a united Ireland through increased exposure and examination of Southern Irish society, and forcing Ulster Protestants to recognize the need for a reasonable and acceptable alternative to the Agreement. The Sinn Fein document, entitled A Scenario for Peace, decries the Hillsborough Treaty as "camouflage for the fact that the Six-County State is a failed entity, socially, economically and politically. The Treaty does not challenge the constitutional status of the Union but actually reinforces it."

The initial reaction to the Anglo-Irish Accord by the Unionist paramilitary groups was to increase their recruiting efforts. As explained earlier in Chapter III, the Protestant paramilitaries are more fragmented, and thus a number of groups have joined together under the banner of the "United Ulster Loyalist Front." The "Ulster Clubs" (as they are known) originated in opposition to the official interference with traditional marches in Portadown in July 1985. The Orange Order and Apprentice Boys use these clubs as rallying points and their leaders do not rule out

violence. Andy Tyrrie, leader of the U.D.A., has offered support to any of the Unionist politicians who calls for assistance.

Common Sense was published by the Ulster Political Research Group chaired by John McMichael, spokesman for the U.D.A. The document points out that "each community tends to form its impression of the other from the rhetoric and posturing of the most zealous and vocal sections of that group." While it underscored the resolve of the Ulster Protestants to defeat the Anglo-Irish Accord, Common Sense placed the Unionist politicians in an awkward position. The U.D.A. is expected to fulfill the role of the Unionist paramilitary wing, not that as political spokesmen. Ulster Unionists appear to be elected on their ability for political zealousness, Ian Paisley and James Molyneaux being two prominent examples. The U.D.A. stepped into the role of spokesman for the silent majority of moderate Ulster Unionists.

The document proposes:

(a) Devolved legislative government for Northern Ireland and a written constitution. A set of constitutional laws, agreed by Ulster Catholics and Protestants together which would lay the foundations on which to build a new progressive democracy. An agreement instituted by Ulster people at referendum which can only be changed by Ulster people at referendum.

(b) A modern democratic political structure based on consensus government, proportional representation and shared responsibility.

(c) A Bill of Rights.

(d) A supreme court charged with the responsibility to uphold constitutional law and safeguard the rights of the individual as represented in the Bill of Rights.<sup>8</sup>

Protests by the Unionist hard-liners were wasted effort against Mrs. Thatcher. The call for a Round Table Conference to discuss devolution by the Unionist Parties is conditioned by the suspension of the Agreement, and while she was ready to take part in such discussions, Mrs. Thatcher's resolve to stand by the Dublin-London Pact was equal to that of the Unionists for the demise of the pact. Many Unionists had hoped that when Charles Haughey took office in February the Irish government would abandon its commitment to the Accord. As leader of the opposition, Mr. Haughey had spoken out against the 1985 agreement signed by his predecessor, Dr. FitzGerald, and Mrs. Thatcher, even though it had been his initiatives in 1980 which had led to the Intergovernmental Conferences paving the way to Hillsborough. Mr. Haughey, much to the chagrin of the Unionists, issued a pledge of continued commitment to the Accord.

#### C. REACTIONS TO THE ACCORD: NATIONALIST

The Nationalist reaction is divided into the moderates of the S.D.L.P. who support the Accord and the radicals of Sinn Fein who oppose it. The Sinn Fein opposition centers on the Hillsborough Agreement being yet another instrument

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<sup>8</sup>John McMichael, Common Sense, Belfast, Ulster Political Research Group, 1987. See Appendix D.

of British colonial rule over the North, this time with the consent of the quisling administration in Dublin. Throughout A Scenario for Peace (Appendix C), Sinn Fein underscores its commitment to nothing less than a complete British withdrawal. It is divided into three sections; the first is Sinn Fein's interpretation of Irish history to reiterate the Irish people's right to national self-determination. The second addresses Loyalist issues and how Sinn Fein proposes to deal with them, and the third section gives the details of how the British government could withdraw and transfer power to an all-Ireland constitutional convention and national government.

The document was a propaganda coup for Sinn Fein which had mounted a substantial terror campaign following its crushing electoral defeat in the February elections in the South. Distribution was meant for elected representatives in Britain and Ireland as well as in the United States, Canada, and Australia. The document was also sent to the representatives of the member states of the United Nations. Its release date of 1 May 1987, followed on the heels of the assassination of Chief Justice Maurice Gibson and his wife, which had commanded international attention for the I.R.A. Party spokesman Danny Morrison had previously claimed that Sinn Fein would "take power in Ireland with an Armalite in one hand and the ballot box in the other," yet the party

denied that the document had anything to do with the dismal election results in the South.<sup>9</sup>

The document was immediately attacked by the S.D.L.P., and the Workers Party.<sup>10</sup> Nicholas Scott, the Deputy Secretary of State, said:

For Sinn Fein to offer a document entitled A Scenario for Peace while their brothers in arms the I.R.A. continue to offer their fellow Irishmen and women nothing but a recipe for death is the height of hypocrisy. The elections of the Republic recently gave their verdict on that hypocrisy when they recognized the I.R.A. and Sinn Fein as being the enemies of their own people.<sup>11</sup>

The S.D.L.P. West Belfast representative, Dr. Joe Hendron, said that the timing and the title of the discussion paper confirmed yet again Sinn Fein's "open contempt for the intelligence of the average man in the street."<sup>12</sup>

With the exception of Sinn Fein, the nationalist community has generally welcomed the Hillsborough Accord and recognized the spirit of cooperation which it is intended to promote. The British general election in June saw the election of an additional S.D.L.P. member of Parliament bringing the total representation for that party up to three. In West Belfast, home of the hard-core Republican

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<sup>9</sup>"S.F. Document 'Insulting and Hypocritical'," The Irish News (Belfast), 2 May 1987, sec. 1, p. 1.

<sup>10</sup>The Workers Party evolved from the Official wing of the I.R.A.; it has renounced violence and run on a Socialist Workers platform.

<sup>11</sup>"SF Reiterates Call for Withdrawal," The Irish Times, Dublin, 2 May 1987, sec. 1, p. 2.

<sup>12</sup>The Irish News, 2 May 1987.

Nationalist, Dr. Hendron was able to strengthen his position even though Gerry Adams retained his seat. Overall, Sinn Fein lost ground dropping from 102,000 in the 1983 General Elections (13.4% of the total vote) to 83,389 (11.4% of the total vote) in 1987. In the General Election of 1983 Sinn Fein took 44.8% of the nationalist vote, and the S.D.L.P. 52.3%. The June election saw the S.D.L.P. strengthen its hold on the nationalist vote, winning 65%, a total of 154,087, 21.8% of all ballots cast.

The success of luring nationalists back to a moderate line after a rally in support of the hunger strike martyrs was mixed. Sinn Fein received 83,389 nationalist votes and thus a vote of support for the I.R.A. The Hillsborough Accord has succeeded in undoing some of the damage done to the S.D.L.P. in the early 1980s by nationalist's perception of a maladroit performance by the British government in the hunger strikes and Mrs. Thatcher's rejection of the New Ireland Forum proposals. Yet, more is needed. Without the support of the Unionists, one million of the population in Northern Ireland, peace and reconciliation will remain only words. John Hume, always a catalyst in search of a solution to the problems of Northern Ireland has characterized the Accord best: "It's a stepping stone."

## VI. THE U.S.-UK SUPPLEMENTARY EXTRADITION TREATY

The U.S.-UK Supplementary Extradition Treaty would not have been ratified by the United States Senate if the American government had not carried out the retaliatory strike against Syria's Colonel Muammar Gaddafi because of his support of international terrorism. On 21 April 1986, under cover of darkness, 13 U.S. Air Force F-111 fighter-bombers flew out of Britain and 12 U.S. Navy A-6 attack planes were launched from 6th Fleet aircraft carriers in the Mediterranean. Air strikes were made on military and intelligence targets in and around Tripoli and the coastal city of Benghazi. This action was taken on the basis of evidence directly linking Libya to the bombing of the La Belle disco in West Berlin where U.S. Army Sergeant Kenneth Ford and a young Turkish woman were killed. Of the 230 people injured, 79 were Americans.

Secretary of State George Shultz announced in an address to the National Security Council, "We have taken enough punishment and beating. We have to act."<sup>1</sup> U.S. Ambassador to the United Nations, General Vernon Walters, acted as the presidential envoy to West European allies, pre-warning them of the action and presenting the evidence against Libya.

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<sup>1</sup>George J. Church, "Targeting Gaddafi," Time, 21 April 1986, p. 21.

After the attack had been executed, only Britain (which had given permission for the F-111s to use English bases), Canada and Israel supported the U.S. action.

Britain's Prime Minister Margaret Thatcher has made independent action a hallmark of her leadership among her fellow European leaders. But her support of the U.S. President in the use of force in dealing with Libya brought on a barrage of criticism not only from the opposition parties, but also from her own Tory back-benchers. She was quick to remind her critics of Libya's support to the Provisional I.R.A. and the murder of Constable Yvonne Fletcher who was killed by gunfire from the Libyan "people's bureau."<sup>2</sup> She also pointed out to Members of Parliament that Britain "owed" the U.S. for the military assistance given Britain in recapturing the Falkland Islands. The United States quickly showed gratitude to Mrs. Thatcher for her support. Riding the crest of American good will towards Britain, the U.S.-U.K. Extradition Treaty, which had been faltering in the Senate Foreign Relations Committee, was quickly approved in committee and then ratified by the United States Senate on 18 July 1986 by a vote of 87-10.

The Libyan raid was just the diversion Congressional pro-treaty lobbyists needed to go on the offensive. Once the treaty was put on the table, it became a must-win

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<sup>2</sup>George J. Church, "The Iron Lady Stands Alone," Time, 28 April 1986, p. 24.



situation for the British Government. The legitimacy of British sovereignty over Northern Ireland had never been a topic of debate in the U.S. Senate. This Treaty, however, facing opposition from the powerful Irish National Caucus, threatened to bring up for public debate and close American public scrutiny the open sore of Ulster. Yet most doubts about the treaty hinged on resistance to the precedent of breaking with the American tradition of granting asylum to political refugees rather than any of the Irish issues.

The Supplementary Extradition Treaty was jointly negotiated by the U.S. Departments of State and Justice with the British Government. The Treaty was initiated in reaction to the frustrated attempts of the British Government to extradite four men wanted for so-called criminal activity in connection with Northern Ireland. These attempts to extradite them had been thwarted in each case by the fugitives' successfully invoking the political offense exception clause of the Extradition Treaty. These four men were Desmond Mackin, Joseph Doherty, William Quinn, and Peter McMullen.

#### A. THE WATERSHED EXTRADITION CASES

The case of Desmond Mackin had come before the United States 2nd Circuit Court of Appeals in 1981. Mackin was a P.I.R.A. member sought for allegedly shooting a British soldier in 1978. A U.S. Magistrate had previously found that, at the time of the offense, the P.I.R.A. was

conducting an armed uprising in the portion of Belfast where the crime was committed; that Mackin was an active member of the P.I.R.A.; and that the attack on the British soldier was incidental to Mackin's role in the P.I.R.A.'s political uprising. Extradition was denied and that decision was upheld on appeal to the district court, and in a judgment of great significance the Second Circuit Court of Appeals refused to disturb the lower court decision.<sup>3</sup> The appellate court decision that the refusal to grant extradition requests in certain contexts is not an appealable order, was to stand later in the case of Joseph Doherty.

The U.S. government then deported Mackin as an illegal alien to Ireland. The Irish government could extradite him to Britain, or try him there under the Criminal Law Jurisdiction Act of 1976. This law was enacted to ensure that those who commit crimes in one country (i.e., Northern Ireland) can not escape prosecution by seeking refuge in the other (i.e., the Republic of Ireland).

Joseph Doherty was one of the four P.I.R.A. members accused of participation in a shoot-out with a British Army undercover unit in Belfast in May 1980. A British officer, Capt. Herbert Westmacott, died in the shootout. While awaiting a court's decision on the charges, Doherty escaped from Belfast's Crumlin Road jail to the U.S. In absentia he

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<sup>3</sup>Abraham Sofaer, "The U.S. U.K. Supplementary Extradition Treaty," Terrorism, Vol. 8, No. 9, p. 334.

was sentenced to life in prison. Doherty was arrested while working as a bartender at a New York pub owned by an American supporter of Irish Republican causes. The request from the British Government for his extradition was turned down by District Judge E. Sprizzo in the Southern District of New York in 1984. The judge found that Doherty had been convicted of crimes that were "political in nature" and was not subject to this country's extradition treaty with Britain.

The decision infuriated the British government and embarrassed the Reagan administration which had seen this action as part of its own effort to defeat international terrorism. The U.S. government, as in the Mackin case, sought a declaratory judgment from the 2nd U.S. Circuit Court of Appeals. In a unanimous 3-0 decision released in March 1985, the court held that "As early as 1847 the U.S. Supreme Court ruled that there is "no provision for the revision" of decisions made by magistrates denying foreign governments requests for extradition." The late Judge Henry J. Friendly also observed in his opinion that "under existing law, the government's only option is to submit the request for extradition to another magistrate for a new hearing."<sup>4</sup>

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<sup>4</sup>"Federal Appeals Court Refuses to Extradite IRA Fugitive," Irish Echo, 29 March 1985, p. 1.

The next case was that of an American, William J. Quinn who was extradited to Great Britain in December 1986 to be tried for the 1975 murder of London police constable Stephen Tribble and for "conspiracy to cause explosions." Quinn is a native San Franciscan who spent most of the 1970s in Ireland where he served a year in a Dublin prison for his membership in the I.R.A. He returned to the United States in 1979 and in 1981, he was arrested for the murder and conspiracy charges at the request of the British Government.

In September 1982, a Federal Magistrate in San Francisco found Quinn extraditable on the grounds that he could not prove his membership in the I.R.A. He therefore could not claim the political exceptions clause in the U.S.-UK treaty as a bar to his return to England. In 1983 a Federal District Judge, Robert P. Aguilar, ruled that the Federal Magistrate was incorrect in ruling that proof of membership was a requisite for claiming the political exceptions defense. Judge Aguilar ordered Quinn freed, but was overruled by the 9th Circuit Court judges who blocked his release pending U.S. government appeal on behalf of the British.

Judge Stephen Reinhardt of the 9th Circuit Court found that "though the clause might well apply to 'criminal activity in Northern Ireland' connected with the uprising-- it does not cover terrorism or other criminal conduct exported to other locations--an uprising is both temporarily

and spatially limited." He said that the I.R.A. by attacking in England had "exported their struggle for political change across the seas to a separate geographical entity." This reinterpretation of the political exceptions defense was declared by Quinn's attorney, Patrick Hallinan, as an illegal "bill of attainder" specifically targeted at his client, but to no avail as William Quinn was successfully extradited under the provisions of the old U.S.-UK Extradition Treaty.<sup>5</sup>

Peter McMullen was arrested by United States immigration officials in his Murray, Utah apartment on 16 December 1986. McMullen was a former I.R.A. man wanted by the British government for allegedly causing explosions at the Palace Barracks of the British Army which killed several people in 1972. He claims that he has since quit the I.R.A. and refused to carry out further assignments. Because of this, he claims that the I.R.A. has and will continue attempts to assassinate him.

The original intent of the United States government was to deport McMullen as an illegal alien. Under the new supplementary provisions of the extradition treaty, however, he is eligible for extradition. Peter McMullen is currently

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<sup>5</sup>"IRA Suspect Called Target of U.S. Vendetta," San Francisco Chronicle, 29 August 1985; "US-British Treaty on Extradition At Issue in 2 IRA-related Cases," New York Times, 20 August 1985, p. 5, Section A; "Extradition Battles--One Is Lost, Another Is Won," Irish Echo, 29 March 1985, p. 2, Section 1.

being held in federal custody pending conclusion of the British government's initiates extradition proceedings against him.

#### B. THE SUPPLEMENTARY EXTRADITION TREATY BATTLE

The old Extradition Treaty between the United States and Great Britain was similar to the extradition treaties which America has with 87 other countries. The purpose of the new supplement was to exclude from the political exceptions clause offenses such as air piracy, kidnapping, offenses using bombs or automatic firearms that endanger human life, and attacks on diplomatic personnel. The 1976 European Convention on the Suppression of Terrorism states that these offenses may not be regarded as political offenses for the purpose of extradition. Also included in the four substantive articles were a statute of limitations, the time limit within which documents must be submitted in support of an extradition request following a provisional arrest, and retroactive application of the treaty.

Following the conclusion of the intragovernmental negotiations on the treaty, the White House transmitted the new Supplementary Extradition treaty to the Senate for ratification in July 1985. The treaty was received for review in the Senate Foreign Relations Committee. The battles between the forces for and against ratification elicited almost immediately Irish-American activism from all parts of the country.

The Executive Branch of the United States Government stood united with the British government in the push towards ratification. Sir Oliver Wright, the former British Ambassador to the United States emphasized that the terrorists in Ireland were not "poets or dreamers" striving to emancipate Ireland; they are sophisticated murderers whose aim is the violent overthrow of government in Belfast and Dublin. He stressed the Marxist ideology of the I.R.A. while downplaying the issues brought up by his opponents in reference to the Diplock Courts<sup>6</sup> and other questionable judicial practices in Northern Ireland. In a speech given 18 September 1985 to the Foreign Law Society in Washington, D.C., Sir Oliver made the following remarks about the treaty:

Most recently we have updated the US-UK Extradition Treaty. Up till now, U.S. courts have tended to release murderers convicted in Irish courts who have found refuge in the U.S. on the grounds that what they were doing was politics. If the Senate gives its advice and consent, murder, manslaughter, kidnapping and hijacking will no longer be recognized as legitimate grounds for refusing extradition. We regard advocacy of Irish unity as a legitimate political aspiration. Political parties exist in Northern Ireland and put up candidates for elections who espouse Irish unity. Nothing wrong about that. All they have to do is what anyone has to do in America or Britain for any legitimate political aspiration: collect

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<sup>6</sup>A Diplock Court is a juryless, single judge judicial system initiated in 1972 after Lord Diplock recommended that an extra-judicial process was required in Northern Ireland. "The only hope of restoring the efficiency of criminal courts of law in Northern Ireland to deal with terrorist crimes is by using an extra-judicial process to deprive of their ability to operate in Northern Ireland those terrorists whose activity result in the intimidation of witnesses (and juries)."

a majority for it. There are hearings on the Hill at which the opponents of the Treaty will have their say. That is right. But I hope that at the end of the day the Senate in its wisdom will give its consent and deny murderers asylum.

In March 1986 pro-treaty factions failed to get the Treaty tied to a \$250 million aid bill in support of the Anglo-Irish Agreement passed by the House of Representatives. Hearings in the Foreign Relations Committee dragged on. Prime Minister Margaret Thatcher took the opportunity of a radio address to admonish the U.S. for:

taking a foremost part against terrorism and then not being as strict as they can be against Irish terrorism, which afflicts one of their allies. To suggest that there is any form of terrorism even justified in democracy is totally and utterly wrong.<sup>7</sup>

The Irish government took a neutral position while Charles Haughey, leader of the opposition party Fianna Fail, came to Washington to lobby against the Treaty. This was an embarrassment to the Irish Prime Minister, Dr. Garret FitzGerald who was attempting to keep the delicate negotiations of the Anglo-Irish Accord on track. These negotiations could easily have been scuttled had the Irish government come out against the treaty.

Republicans on the Senate Foreign Relations Committee outnumbered the Democrats nine to eight, but the Democrats successfully opposed the treaty when Republican Senator Jesse Helms voted against the treaty. The Irish-American

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<sup>7</sup>"Free Societies Must Fight Terror Together," USA Today, 6 April 1986.



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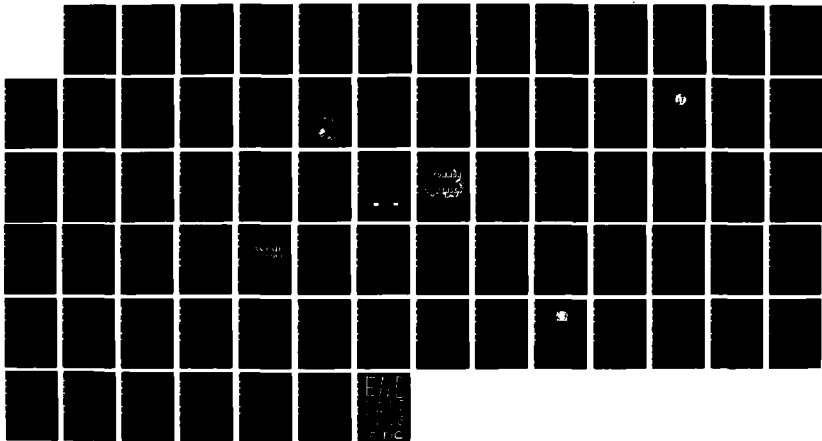
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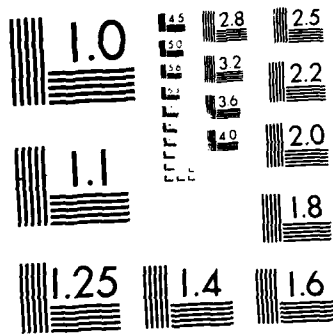
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anti-treaty lobby included the powerful Irish National Caucus led by Father Sean McManus, the American Irish Political Education Committee, the Ancient Order of Hibernians, and even the radical pro-I.R.A. Noraid. Each State Department expert to testify for the Treaty was met with hostility from the gallery. Lobbyists had come from all over the country for these hearings, the first time in 64 years in which Ireland was to be discussed in the United States Senate.

Those who testified against the treaty included an impressive array of Senators, Congressmen, Community leaders, Academics, Clergy, and leading Irish-American citizens. The rhetoric was strong in condemning British actions in Ireland and Northern Ireland and emphasized that many Irish Americans were here because of British persecution. The most damaging statements to Treaty ratification were those addressing the Diplock Courts in Northern Ireland. This resulted in Sen. Biden of Delaware calling for a hearing on the nature and state of the laws in Northern Ireland. Even pro-treaty senators agreed that the matter was very complex.

Just as the opposition was killing the Treaty in committee, the Libyan bombing in West Berlin and our retaliatory strike dominated world events. In a renewed effort to seek ratification, President Ronald Reagan intervened in the wake of Senate opposition with a radio

address given to the nation from Camp David on 31 May 1986. The last four paragraphs specifically addressed the Extradition treaty and would have spelled political suicide for those senators who continued to oppose the treaty:

Well in Tokyo, the democracies declared there is no political or any other justification for terrorist acts, and those who commit them should be brought to justice. The world is watching. If actions by a few Senators allow terrorists to find safe haven in the United States, then there will be irreparable damage. Refusal to approve the supplementary treaty would undermine our ability to pressure other countries to extradite terrorists who have murdered our citizens. And rejection of this treaty would be an affront to British Prime Minister Margaret Thatcher --one European leader who, at great political risk, stood shoulder to shoulder with us during our operations against Qaddafi's terrorism.

Some members of the Senate Foreign Relations Committed have gone so far as to prepare a substitute treaty permitting those who have murdered British policemen and soldiers, for so-called political reasons, to avoid extradition. Well, this substitute is not a compromise--it's retreat. Its passage would be a victory for terrorism and a defeat for all we've been trying to do to stop this evil.

One concern about the treaty is that it may set a precedent for other treaties, which will then be used against those who simply oppose totalitarian regimes. We can never permit that to happen. Our country will always remain the beacon of hope and freedom to all oppressed peoples.

I therefore urge the Senate to promptly approve the revised treaty and reinforce the momentum building against terrorism. With good sense, courage and international cooperation, our struggle against terrorism will be won. And the United States will lead the way into a freer and more peaceful tomorrow.

Opponents of the Treaty were effectively neutralized and less than two months later, the Senate voted 87-10 in favor of ratification.

The ratification of the Supplementary Extradition Treaty by the Senate was an important symbol of the Anglo-American mutual support system. The extradition of Joseph Doherty and Peter McMullen to the United Kingdom will signal the I.R.A. and the world, that the United States does not condone its violent methods and desires a peaceful resolution to the problems in Northern Ireland. It also awakened the Irish-American lobbyists to the political power which they have at their disposal to help resolve Irish problems.

## VII. CONCLUSIONS

Government counteraction plays an important part in curbing terrorist violence, but to be effective, action must be initiated on a wide front which deals with the root causes of terrorism as well as defense against terrorist attack. Westminster, Dublin, and Stormont have enacted some of the harshest laws in the free world directed in an effort to deal with I.R.A. terrorism. The security forces (the British Army presence throughout Northern Ireland is the largest outside of NATO forces in Europe) on both sides of the border have had many years to perfect enforcement techniques. Yet Northern Ireland remains a paradox of perhaps the easiest and most dangerous area of the world for political revolutionaries to practice terrorism. It is the easiest area because of the community support which exists-- 83,159 votes for Sinn Fein in the 1987 British general election--and the most dangerous area because of the effectiveness of the security forces.

The Prevention of Terrorism Act, the Anglo-Irish Accord, the U.S.-UK Supplementary Extradition Treaty as well as other government measures enacted as a result of terrorist violence in Northern Ireland that were not covered in this study, represent a visible means that a free democracy can point to as effective methods of dealing with terrorism.

Extraordinary measures are justified when an armed minority attempts to impose its will on a majority of a community. The aggravation of day to day life living with terrorism prevention measures is something the people of Northern Ireland have grown accustomed to over the past 18 years. One can debate the question, would reform for Catholics have occurred in a province that festers with tribal intransigence? "Before the unreasonable or the unyielding, even moderation has to resort to violence to be heard. However unpalatable, the fact is that violence, and often only violence, has been effective in achieving progress in Ireland."<sup>1</sup>

Although the majority of the population, North and South, desire peace and stability and seek the benefits that are acquired through EEC membership, 1.8% of the Irish Republic and 10.4% of the Northern Irish electorate voted for Sinn Fein. Sinn Fein and the I.R.A. are violently opposed to EEC membership and Irish involvement in any type of defensive alliance. Progress towards greater European Community cooperation which includes Ireland must withstand future attacks from the I.R.A. until support for the I.R.A. can be eradicated. And eradication of the I.R.A. can only be accomplished by drying up the seas in which the terrorist fish swim. The process may be long, and must work for

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<sup>1</sup>John Conroy, Belfast Diary War as a Way of Life (Boston: Beacon Press, 1987), p. 217 as quoted from Thames Television reporters in their book, The Troubles.

Protestants and Catholics alike. The desire to obey the laws of society is born out of a perception of fair and equal treatment to all.

On the security side of the problem, the policy of Ulsterization also represents a positive move towards diminishing violence. Using the Royal Ulster Constabulary and the Ulster Defense Regiment to combat the I.R.A., pits Irishman against Irishman and represents a step towards devolution of government back to the people of Northern Ireland. When Chief Justice Gibson and his wife were murdered in April 1987 by the I.R.A., the British Government came under a lot of pressure from the Ulster Unionists to increase security, i.e., bring in more British Army soldiers. In a special debate over security held in the House of Commons on 6 May 1987, Ulster Unionist, who had been boycotting Parliament since the enactment of the Anglo-Irish Accord, returned to make their points heard.

As Tom King, the Secretary for Northern Ireland, outlined the government's program to improve security, the Unionist MPs made it known through their own special brand of political rhetoric that the government actions were too little too late. The I.R.A. had mounted a successful campaign of murdering R.U.C. and U.D.R. men which had only culminated with the murder of Chief Justice Gibson.

The plan to deal with this new upsurge in I.R.A. violence was to increase recruitment for the U.D.R. and



R.U.C. Part time members of the U.D.R. were called up to permanent duty for an indefinite period of time to increase the force levels in support of the R.U.C. Despite the criticism from the Unionists, these actions were consistent with Ulsterization. The long range goals of this policy must not be sacrificed to short term political pressure. Seamus Mallon, deputy leader of the S.D.L.P. stated:

One lesson we have learned in the last 16 years is that those who are involved in paramilitary activities and who have committed themselves to violence can live with repression. They will also try to promote repression because it is their biggest single propaganda weapon. They cannot do without it, because they cannot live without that type of repression. In both propaganda and political terms, repression is their lifeblood. It would be a tragic mistake to provide them with that lifeblood.<sup>2</sup>

The National community, which endures the brunt of security measures, is critical of any effort which includes increased British security forces to cope with higher violence levels.

More informative in the quest of why a situation like Northern Ireland exists than the debate that day, was who was present at the debate. The Unionists had returned, but who was there to listen? The two S.D.L.P. MPs were there, John Hume and Seamus Mallon. The governmental majority conservatives had 17 members present which included Tom King and Nicholas Scott, cabinet members with responsibility for Northern Ireland. The Labor party mustered five members and

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<sup>2</sup>Great Britain, Parliament, Parliamentary Debates (Commons), Vol. 115, No. 102, 6 May 1987, p. 396.

the Alliance Party, one. The Rev. William McCreay, a Unionist MP, made a comment to this fact:

Two honorable Members were in a discussion and were laughing together about why the House was so sparsely attended today. They said that there was "a difficult decision of priorities." They had to decide between Rolls-Royce shares and attending this debate. I quote these remarks made by two honorable Members in a corridor of this House today because it typifies what many of my colleagues feel, that there is little interest among honorable Members across the water in the suffering and anguish of the people in Northern Ireland.<sup>3</sup>

The British Isles--Ireland, Northern Ireland, and Great Britain, represent 60 million people--the majority of whom have little concern about Northern Ireland. Those who are concerned, the Unionists and Nationalists of Northern Ireland have little influence over their future. The Unionists, who represent approximately one million people in Northern Ireland, hold only 13 of the 650 seats in the House of Commons (three of the seats are held by the moderate Nationalist Party, the S.D.L.P., and one by Sinn Fein). Since the Anglo-Irish Agreement, the Unionists have felt betrayed by the British Government and have boycotted their seats in the House of Commons.

One Unionist supporter in the gallery observing the debates--a young man of no more than 18 years--wore his politics on his back: "Ulster Says No!" referring to the Anglo-Irish Accord. He reminded me of why the problem in Northern Ireland will be perpetuated unless some type of

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<sup>3</sup>Great Britain, Parliamentary Debates (Commons), Vol. 115, No. 102, 6 May 1987, p. 402.

integration is sponsored by the government similar to forced busing in the U.S. An Ulster Protestant is very likely to grow up never knowing a Catholic, and vice-versa. The educational system, supported by the government, is segregated. Catholics go to government-supported Catholic schools and Protestants go to government-supported "public schools." John Conroy, in his book Belfast Diary, War as a Way of Life, gives an excellent illustration of "who" is likely to be tomorrow's I.R.A. volunteer and why:

While the world finds the problem in the North complex, a teenager in Clonard or Ballymurphy sees it as elementary. He knows he will have no work, or if he does have it, it will not reflect his intelligence or pay him enough to escape the ghetto. He finds himself regarded not as a citizen, but as a suspect, and at some point in his young life he will probably have a confrontation with the army or police that will convince him that those forces are not his protectors. He will probably get little guidance from his parish priest, except perhaps at election time, and it is unlikely that he will reach adulthood knowing a single neighbor who is active in the S.D.L.P. Given his natural desire for dignity and his conviction that the system is unjust, it comes as no surprise when he assumes the role of the violent man or his auxiliary.

John Hume, leader of the S.D.L.P., has stated,

only a process will heal the division in Ireland. Too many seeking to remedy the problems of Ulster attempt to start where they would like to be rather than where we are at now. Only patient work in developing that process over the years will produce the final stability.

Anti-terrorism laws with stiff punishments, internment without trial, harsh interrogation methods, Diplock Courts (trial without jury), international extradition agreements, security cooperation agreements, and even the construction

of a wall called the "Peace Line"<sup>4</sup> to keep Belfast Protestants and Catholics separated, have not ended the violence. The best start to the process which John Hume speaks of is the recognition of the two legitimate traditions--Nationalist and Unionist--has begun with the Angle-Irish Agreement. There is no way forward through violence; violence only destroys justice for all. Enlightened citizens of Northern Ireland acknowledge this and the international interest accorded to the province has raised the stakes to succeed.

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<sup>4</sup>Peter Maas, "Can the War in Northern Ireland End This Year?" Parade Magazine, 8 February 1987, p. 4.

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APPENDIX A

MAPS



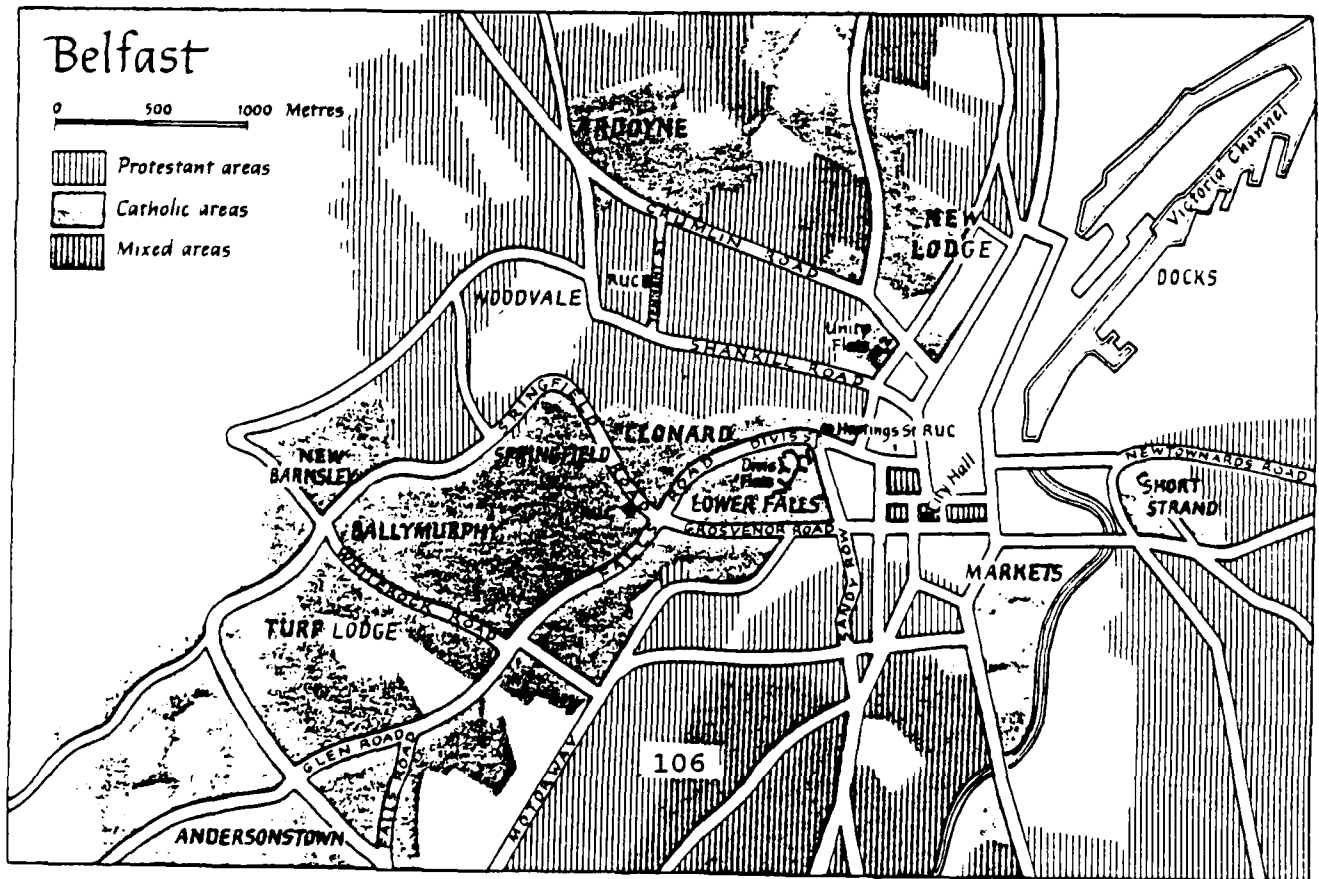
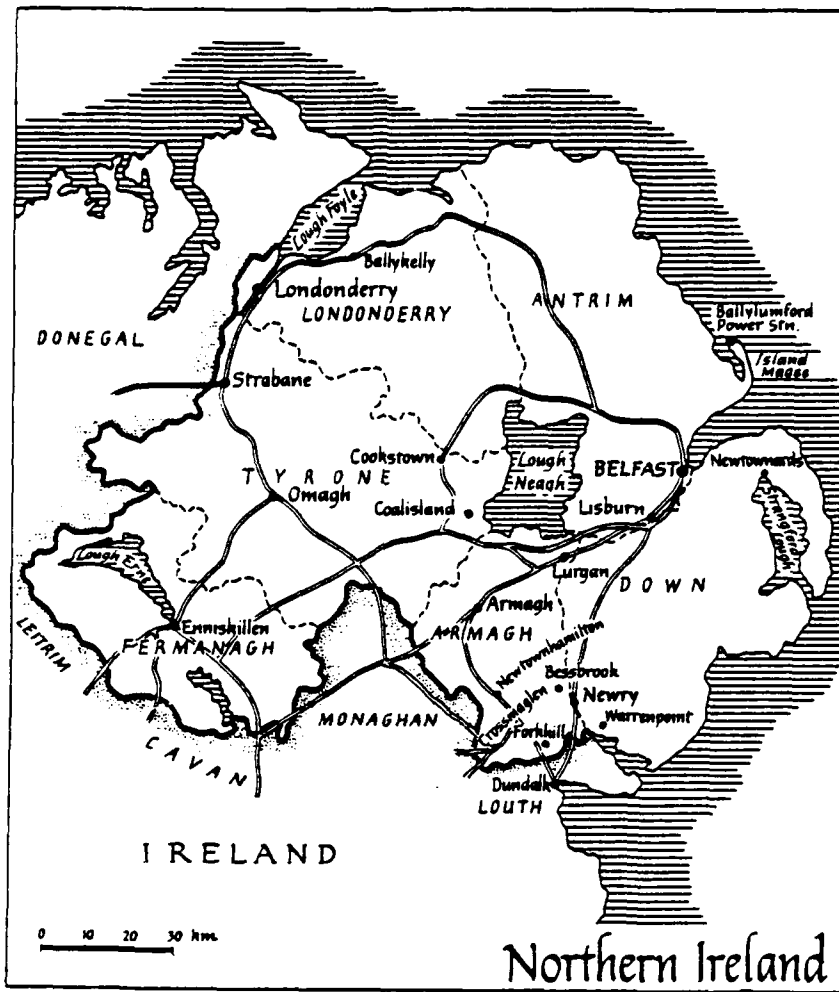
N.A.T.O. Members not shown on map:—

- ITALY.
- PORTUGAL.
- GREECE.
- TURKEY.
- LUXEMBURG.
- U.S.A.
- CANADA.





IRELAND



## APPENDIX B

### GLOSSARY

**Apprentice Boys**--A loyalist body with strong links to the Orange Order. Its members march once a year in Derry to celebrate the Protestants who in 1688 shut the gates of the city against the Catholic pretender to the English throne, James II. A confrontation between the Apprentice Boys and local Catholics led to a serious outbreak of violence in Derry on August 12, 1969, which in turn set off a series of riots throughout Northern Ireland, forcing the British government to introduce the Army.

**B-Specials**--Set up in 1920 before partition as part of a Protestant militia recruited to reinforce the police in northeast Ireland, the B-Specials remained as an auxiliary force for the Royal Ulster Constabulary when it was created two years later to defend the newly established state. They soon gained a reputation among Catholics for bigotry and violence. In August 1969 the B-Specials played a controversial role in the civil disruptions, which led to the force's abolition by the British Labor government, which replaced it with the Ulster Defense Regiment, under the control of the British army.

**Bloody Friday**--21 July 1972. Eleven people were killed and 130 injured after 26 bombs, planted in Belfast by PIRA, exploded during a busy shopping afternoon.

**Bloody Sunday**--30 January 1972. Thirteen people shot dead by 1st Parachute Regiment after rioting by a mob of breakaway 'hooligans' which followed an illegal (but otherwise peaceful) march organized by the Derry Civil Rights Association).

**Brick**--A unit peculiar to Northern Ireland. It was the basic patrolling unit and contained just four men, commanded by a Corporal or Lance-Corporal. Different tasks would be met by using a variable number of bricks.

**Democratic Unionist Party**--Founded by the extreme loyalist leader, the Reverence Ian Paisley, in 1971, it is a vehicle for right-wing Unionist policies, though with a populist, working-class base.

**Diplock Courts**--Following proposals by Lord Diplock, provisions were made in the Emergency Powers Act 1973 for 'no jury' courts for cases involving terrorist offenses. One reason given for this was that witnesses were being intimidated by having to appear in front of a jury.

**Direct Rule**--Imposed by the central Government at Westminster in March 1972. The Northern Ireland Parliament at Stormont was suspended, which meant direct rule of the province from London.

**Falls Road**--The main Catholic area of Belfast, running from the city center largely parallel to the Protestant Shankill Road. It has seen endless confrontation between PIRA and the security forces, and sometimes between PIRA and the OIRA, and between the OIRA and the IRSP.

**Fianna Fail**--The largest political party in the Republic of Ireland, founded by Eamonn DeValera in 1926 after the split from Sinn Fein. Fianna Fail, adopting a pronationalist approach and vowing to end partition peacefully, went on to become the party of government of the Irish republic for most of the state's sixty-year history.

**Fine Gael**--Founded in 1933 as a right wing, pro-Fascist party, it grew into the second largest of the Irish political groupings (after Fianna Fail), with a more conservative line.

**H-Block**--The name (based on the shape of the buildings) given by Republicans to the Maze prison outside Belfast for those convicted of terrorist offenses. The prison was first officially known as Long Kesh, and later as the Maze Prison. It was here that Republican prisoners went 'on the blanket' in protest at the ending of the Special Category status. They stepped this up by refusing to leave their cells, wash or use toilet facilities. The protest culminated in the hunger strike of 1981 in which ten prisoners died. The first was Bobby Sands, on 5 May, and the last Mickey Devine, on 20 August.

**Internment**--Internment without Trial was introduced on 9 August 1971 under the Special Powers Act. In an initial dawn swoop code-named 'Operation Demetrius,' the security forces arrested 346 IRA suspects out of a total of 520 on their lists. One hundred and four were released within 48 hours, but in the same period widespread rioting claimed the lives of 23 people.

**Irish Labor Party**--A trade union-based, mildly reformist grouping in the Irish Republic with only marginal support among the Irish working class (who traditionally support Fianna Fail).

**Irish National Liberation Army**--Made up of ex-Official IRA men who wanted to end the Officials' cease-fire and, when unable to do so, launched their own guerrilla group, which became involved in a bloody feud with their former comrades. INLA maintains a sporadic campaign of attacks on British soldiers, policemen, and prison officers throughout Northern Ireland. It is regarded by the security forces as small but dangerous, with a hard core of veteran guerrillas.

**Irish Republican Army**--The nationalist guerrilla organization; which fought the British during the 1919-21 war of independence. In the 1940s, 1950s, and early 1960s, the IRA conducted sporadic and unsuccessful campaigns against the Unionist government in Northern Ireland, but it won little support from local Catholics there, and by the mid-1960s was regarded as something of an anachronism. During this period another Communist Party-dominated leftward tendency developed among IRA leaders in Dublin like Cathal Goulding, who were disillusioned by the failure of previous campaigns. At the same time the crisis in Northern Ireland reached violent proportions, galvanizing the Northern-based IRA into action and eventually splitting the movement into those who favored a violent attack on partition and those who continued to pursue the line of compromise with emphasis on political and social action. The former became the Provisional IRA and the latter the Official IRA.

**Irish Republican Socialist Party**--Formed in late 1974 by members of the Official IRA and Official Sinn Fein who became concerned at what they considered the lack of militancy in the leadership and the failure of the movement to emphasize the question of partition.

**Nationalist Party**--The anti-partition party of Northern Ireland founded in 1921.

**'No Go' Areas**--The phrase used to describe areas behind barricades set up between 1969-1972, to keep out the Army, the police and other sectarian groups. They were mainly in Catholic areas of West Belfast, and the Bogside and Creggan in Londonderry, and dominated by PIRA. Sometimes the Protestants set up their own 'No Go' areas, but usually in order to pressure the security forces to act against those in Catholic areas.

**Northern Ireland Civil Rights Association--**Founded in 1967 by diverse elements, including republicans, in order to draw attention to discrimination in housing allocation and job opportunities against Catholics by Unionist regime. A series of well-publicized protest marches was met by violent opposition from the government and loyalist groups and set off a chain reaction which brought Northern Ireland to the verge of civil war in August 1969.

**Orangemen--**Members of the Orange Order, the largest Protestant Organization in the province. It was first formed in 1795 and took its name from King William of Orange who, during the religious wars of the late 17th century, beat King James at the Battle of the Boyne in 1690. This victory is celebrated each year on 12 July with huge Orange Lodge parades across the province. There are close links, and overlapping membership, with the Apprentice Boys of Derry, and Unionist politicians have nearly always felt it necessary to be members of the Orange Order.

**Royal Ulster Constabulary--**Founded as the Northern Ireland police force in 1922, it was a paramilitary force with mostly Protestant membership. (Catholics only made up 10% of the RUC at most.) Its function was not so much that of a civil police body as a defender of the Unionist government and the territory of Northern Ireland. Reformed in 1969 and again, though less drastically, in the mid-1970s as part of the British government's policy of "Ulsterization," the RUC has been regaining its importance as the primary security force in Northern Ireland, in spite of many controversies created because of its documented violations of prisoners' rights.

**SAS--**22 Special Air Service, the modern counterpart of the SAS Regiment raised in 1941 to operate behind enemy lines. Particularly trained for long-term surveillance and covert operations, each four-man operational patrol contains a signals, medical, demolition and linguistic capability to provide maximum flexibility. Its organization and operations are shrouded in secrecy, to the extent that in some circles it is considered an assassination unit, whose reputation strikes more terror than its deeds.

**Shankill Road--**Considered as the major Protestant area of Belfast, and the very core of loyalty strength.

**Sinn Fein--**The nationalist party founded in 1907 which went on to become the political wing of the IRA. After the



IRA split, Sinn Fein followed suit with the formation of the Official and Provisional Sinn Finn organizations. Since then neither faction has exercised much political influence in Ireland, where they remain essentially rump parties.

**Ulster Defense Association**--The largest of the Protestant paramilitary organizations and the one responsible for most of the sectarian violence in Northern Ireland. Founded first in 1969 as a loose collection of vigilante groups. It was taken over in 1971 by extremist elements who transformed it into a militia with a hard core of assassins.

**Ulster Defense Regiment**--Formed by the British government in April 1970 to replace the abolished B-Specials, the Ulster Defense Regiment (UDR) is a locally recruited unit of the British Army.

**Ulster Freedom Fighters**--In 1973 the UDA assassins started calling themselves the Ulster Freedom Fighters and issued statements claiming responsibility for sectarian murders under that name. Its actions have remained at a sectarian level, responding to the IRA campaigns.

**Ulster Protestant Volunteers**--Formed in the mid-1960s by the Reverend Ian Paisley, the Ulster Protestant Volunteers (UPV) was a paramilitary body attached to the Free Presbyterian Church.

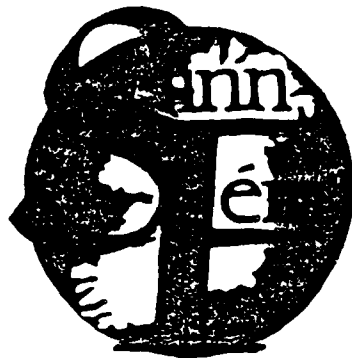
**Ulster Unionist Party**--For many years the leading loyalist party in Northern Ireland, committed to opposing Irish unity.

**Ulster Volunteer Force**--(1) A Protestant militia formed in 1912 to oppose home rule for Ireland. (2) A paramilitary group created by Gusty Spence in the mid-1960s, using the emotive initials "UVF" and determined to oppose what its members perceived as the threat of IRA subversion.

Sources: Jack Holland, Too Long A Sacrifice,  
Desmond Hamill, Pig in the Middle,  
W.D. Flackes (ed.), Northern Ireland

APPENDIX C

A SCENARIO FOR PEACE



A SCENARIO  
FOR PEACE

A DISCUSSION PAPER

*Issued by Sinn Fein Ard Chomhairle*

THIS DOCUMENT is presented by Sinn Fein for discussion and as an answer to those who claim that there is no alternative to the continuation of British rule. It does not represent the definitive republican position, nor is it exclusive of other proposals dealing with alternative scenarios for a British withdrawal from Ireland.

The first section reiterates the Irish people's right to national self-determination, the second section deals with the question of the loyalists and the final section proposes a way in which the British government could withdraw and transfer power to an all-Ireland constitutional convention and national government.

## NATIONAL SELF-DETERMINATION

The island of Ireland, throughout history, has been universally regarded as one unit.

The historical and contemporary existence of the Irish nation has never been in dispute.

The Irish people have never relinquished their claim to the right to self-determination.

What has been in contest is the right of the Irish people, as a whole, to self-determination and their freedom to exercise that right.

For centuries, the relationship between the British government and the Irish people has been the relationship between the conqueror and the conquered, the oppressor and the oppressed.

The perennial cycle of oppression/domination/resistance/oppression has been a constant feature of the British government's involvement in Ireland and the Irish people's rejection of that government's usurpation of the right to exercise control over their political, social, economic and cultural destiny.

From the late 17th century onwards, that usurpation provoked both revolutionary resistance and – within the narrowest confines of British constitutional legality – constitutional opposition. In the course of the 19th century, British oppression and famine caused the population of Ireland to be halved.

The only occasion on which the people of all Ireland have been permitted to hold free and fair elections to determine their political future was in the 1918 Westminster Elections. Sinn Fein, with a political programme demanding complete independence for the unitary state of Ireland, won the election with 69.5% of the vote. Those democratically-elected representatives of the Irish people formed Dail Eireann and, on January 21st 1919, enacted the Declaration of Independence.

The Anglo-Irish Treaty of 1922, the partition of Ireland and the Constitution of the Irish Free State were imposed on the Irish people under the threat of "*immediate and terrible war*". They were not submitted to the Irish people for ratification and their imposition represents a denial to the Irish people of the freedom to exercise their right to self-determination.

The pretext for partition – the wishes of a national minority to maintain British rule – holds no validity against the express wishes of the vast majority of the Irish people.

Secession is not the same as self-determination.

Partition perpetuates the British government's denial of the Irish people's right to self-determination. It perpetuates the cycle of oppression/domination/resistance/oppression.

In the words of Sean MacBride, winner of the Nobel and Lenin Peace Prizes:

**"Ireland's right to sovereignty, independence and unity are inalienable and indefeasible. It is for the Irish people as a whole to determine the future status of Ireland. Neither Britain nor a small minority selected by Britain has any right to partition the ancient island of Ireland, nor to determine its future as a sovereign nation."**

## LAW

IRELAND'S RIGHT to sovereignty, independence and unity – the right of the Irish people, as a whole, to self-determination – is supported by universally-recognised principles of international law.

The right to self-determination is enshrined in the two United Nations' Covenants of 1966 – the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights*. Article 1 of each covenant states:

**"1. All peoples have the right to self-determination. By virtue of that right they determine their economic, social and cultural development."**

The landmark *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* declares:

**"... all people have the right freely to determine, without external influence, their political status and to pursue their economic, social and cultural development and every state has the duty to respect this right in accordance with the provisions of the Charter."**

Partition is in contravention of the *United Nations' Declaration on the Granting of Independence to Colonial Countries and Peoples*. Article 6 of which states:

**"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."**

## LOYALISTS

THE MAJOR stumbling block to independence is British colonial interference. However, it suits the British and the loyalists for the loyalists to be portrayed as the real obstacle to that independence and allows Westminster off the hook, projecting itself as the 'honest broker'.

While we in no way wish to ignore the economic challenge which reunification presents, or minimise the extent of the problem, or the great trauma that will be experienced by the unionist population, we believe that loyalism derives an artificial psychological strength from the British presence, from the Union. Indeed, the relationship between unionist intransigence and past *unconditional* British support is recognised (though unacknowledged) by Thatcher's government, part of whose present strategy, via the Hillsborough Treaty, is to rock the morale of loyalists, split the unionists and force the emergence of a pragmatic leadership which will do an internal deal with the SDLP.

The loyalists are a national minority in Ireland. According to most opinion polls, the majority of people in Britain want to wash their hands of Ireland. Increasingly, loyalists are finding themselves in an untenable position. Their protest campaign against the Hillsborough Treaty has cost them dearly in PR terms and to the British public it has only emphasised the differences between the Six Counties and Britain. Their refusal to enter into dialogue (with anyone) and their disillusionment with the British government is producing a momentum towards disaster where Civil War, or a Unilateral Declaration of Independence, or repartition are among the irrational proposals put forward by some of the paramilitaries and politicians.

Sinn Fein seeks a new constitution for Ireland which would include written guarantees for those presently constituted as 'loyalists'. This would recognise present-

day social reality and would include, for example, the provisions for family planning and the right to civil divorce.

The resolution of the conflict would free unionists from their historic laager mentality and would grant them real security instead of tenure based on repression and triumphalism. We do not intend to turn back the pages of history, or to dispossess the loyalists and foolishly attempt to reverse the Plantation. We offer them a settlement based on their throwing in their lot with the rest of the Irish people and ending sectarianism. We offer them peace. We offer them equality.

It is only through the process of decolonisation and dialogue that a peaceful, stable Ireland will emerge. Only when independence is restored can Ireland hope to prosper and take her place among the nations of the world. Britain must take the initiative and declare its intention to withdraw. That is the first step on the road to peace. Republicans will respond quickly and positively.

## A SCENARIO FOR PEACE

THE ENDING of partition, a British disengagement from Ireland and the restoration to the Irish people of the right to exercise self-sovereignty, independence and national self-determination remain the only solution to the British colonial conflict in Ireland.

The Hillsborough Treaty and the processes it involves seek merely to camouflage the fact that the Six-County state is a failed entity, socially, economically and politically. The Treaty does not challenge the constitutional status of the Union but actually reinforces it.

Sinn Fein seeks to create conditions which will lead to a permanent cessation of hostilities, an end to our long war and the development of a peaceful, united and independent Irish society. Such objectives will only be achieved when a British government adopts a strategy for decolonisation.

It must begin by repealing the 'Government of Ireland Act' and publicly declaring that the 'Northern Ireland' statelet is no longer part of the United Kingdom

Furthermore, it must declare that its military forces and its system of political administration will remain only for as long as it takes to arrange their permanent withdrawal.

This would need to be accomplished within the shortest practical period. A definite date within the lifetime of a British government would need to be set for the completion of this withdrawal.

Such an irreversible declaration of intent would minimise any loyalist backlash and would go a long way towards bringing round to reality most loyalists and those of their representatives genuinely interested in peace and negotiation. It would be the business of such negotiations to set the constitutional, economic, social and political arrangements for a new Irish state through a Constitutional Conference.

## **CONSTITUTIONAL CONFERENCE**

**FREE ELECTIONS** to an all-Ireland Constitutional Conference would be arranged. The conference would consist of the elected representatives of the Irish people and would be open to submissions from all significant organisations in Ireland (e.g. the Trade Union Movement, the Women's Movement, the Churches) and would draw up a new constitution and organise a national system of government.

While this conference could have no influence on the decision by Britain to withdraw, it would play an important role in organising the transition to a new governmental system. Should it fail to find agreement on a new Constitution, or on any other matter, a British withdrawal would proceed anyway within the fixed time period.

Republicans have consistently asserted that the loyalist people in common with all other citizens, must be given firm guarantees of their religious and civil liberties and we repeat our belief that, faced with a British withdrawal and the removal of partition, a considerable body of loyalist opinion would accept the wisdom of negotiating for the type of society which would reflect



their needs and interests. The irreversible nature of a British withdrawal strategy would be a major influence in convincing loyalists that we were entering into a new situation which could not be changed by the traditional methods of loyalist intransigence.

## **BRITISH WITHDRAWAL**

**AS PART of the military withdrawal, the RUC and UDR would be disarmed and disbanded.**

The introduction of United Nations forces or European forces to supervise a British withdrawal or fill any alleged vacuum would only frustrate a settlement and must be avoided. Experience in other conflicts has shown that such a 'temporary' presence would become 'permanent' and the deployment would have a political bias. Their subsequent withdrawal would become a point of contention and there would be a re-run of the bloodbath-threat scenario. Similarly, there should be a real effort to avoid the introduction of forces from the Twenty-Six Counties.

The Constitutional Conference would be responsible for determining the nature and composition of an emergent national police service and the judiciary. There is absolutely no doubt in our minds that, if Britain were to be sincere about disengaging and was committed to an orderly transference of power, this could be achieved with a minimum of disorder.

All political prisoners would be unconditionally released.

A cessation of all offensive military actions by all organisations would create the climate necessary for a peaceful transition to a negotiated settlement.

As part of the settlement, the British government must accept the responsibility for providing financial support by agreeing by Treaty with the national government to provide economic subvention for an agreed period. Given the disastrous involvement of British rule in Ireland, reparations for an agreed period are the least contribution Britain could make to ensure an ordered transition to a national democracy and the harmonisation of the economies, North and South.

A SCENARIO FOR PEACE

SINN FEIN

Anyone unwilling to accept a united Ireland and wishing to leave should be offered resettlement grants to permit them to move to Britain or assist them to move to a country of their choice.

The onus is on the British government to ensure a peaceful transition to a united and independent Ireland. The shape of that society is a matter for the Irish people. Only when Britain recognises that right and initiates a strategy of decolonisation along these lines will peace and reconciliation between Irish people and between Britain and Ireland be established.

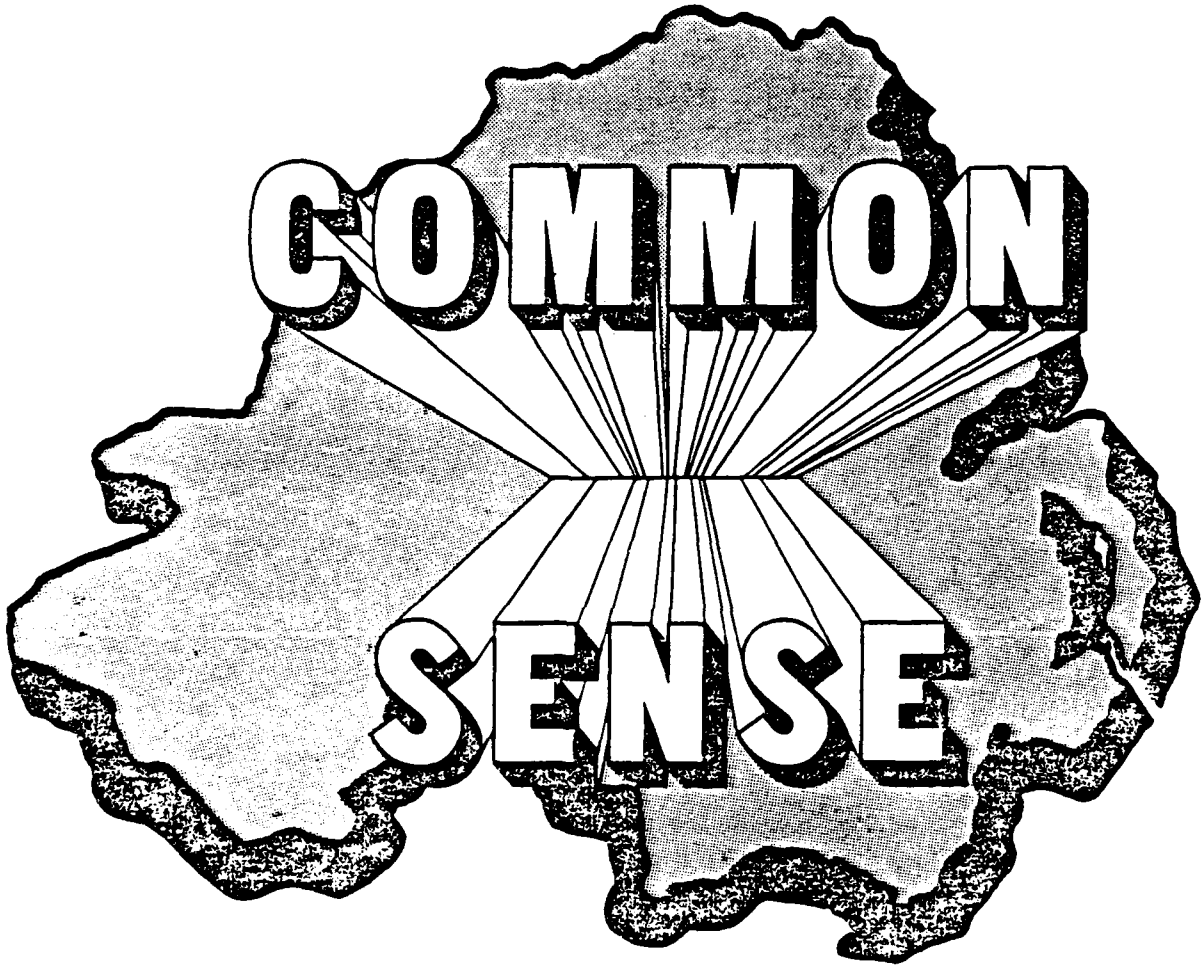
SINN FEIN's ultimate objective is to see established in Ireland a thirty-two-county, democratic, socialist republic based on the principles contained in the 1916 Proclamation. However, more pressing is the fact that partition is the immediate cause of bloodshed and division in the North, perpetuating the sectarianism which prevents the emergence of class politics.

For further information on the policies of Sinn Fein or the Republican Movement please contact Sinn Fein Head Office, 44 Parnell Square, Dublin 1. Tel: 726932, Telex 30109, or 51/55 Falls Road, Belfast, Tel: 230261.  
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APPENDIX D

COMMON SENSE



(NORTHERN IRELAND - AN AGREED PROCESS)

# COMMON SENSE

## Preface

At the time of writing we are suffering yet another Ulster constitutional crisis, this time provoked by the Anglo-Irish Agreement. Violence, intercommunity strife, polarisation and uncertainty are all at a higher level than at any time for almost a decade. The 'accord' will not bring peace, stability nor reconciliation to Northern Ireland because it is a contract between two governments and not an agreement between those in the cockpit of the conflict — Ulster Protestants and Ulster Catholics.

This whole document could be used to expound the faults and failures of the Anglo-Irish approach to the Ulster problem but that is not the purpose of this paper. It is enough to say that after more than a year in existence the 'accord' has not won over the support of even one small loyalist group, opposition to the agreement remains absolute. Any scheme which is opposed to such a degree has little or no chance of developing into a solution.

Yet the Anglo-Irish Agreement has at least done two things which may speed movement towards a real internal agreement in Ulster. The increased exposure and examination of Southern Irish society has further increased disillusionment for Ulster Catholics in the prospect of a united Ireland. At the same time Ulster Protestants are increasingly heard to say that whilst they are totally resolved to defeat the Anglo-Irish Treaty they recognise the need for a reasonable and acceptable alternative to the agreement. They recognise that it is not enough to simply say NO. With this in mind the Ulster Political Research Group presents this paper for discussion as one possible alternative.

We are all part of the problem but how many are prepared to be part of the settlement. It costs nothing to think about it.

*"Perhaps the sentiments contained in the following pages, are not yet sufficiently fashionable to procure them general favour; a long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defence of custom. But the tumult soon subsides. Time makes more converts than reason...." (Thomas Paine 1776).*



## INTRODUCTION

Who (in 1969) would have thought that after nearly Twenty years the 'troubles' would still rage unabated with the Ulster Protestant-Loyalist-Unionist community and the Ulster Catholic-Irish Nationalist-Republican community still locked in stalemate? Yet here we are in 1987 with nothing to show for it all but the prospect of looking forward to an ever polarising society brutalised by violence, ravaged by fear and demoralised by economic depression.

### HOW LONG CAN THIS GO ON?

The stubborn determination of each community not to 'give in' to, nor be beaten by, the other ensures that the conflict could continue indeterminately unless we can produce a settlement which removes the main sources of antagonism to each side. In the quest for proposals which may lead to a social and political solution to the Ulster conflict we must first identify the parameters within which such proposals are realistic. Surely by now we recognise that there are limits beyond which each community will not (under any circumstances) retreat nor indeed be forced. It is not always that which is true which is important, but that which is believed to be true. Each community tends to form its impression of the other from the rhetoric and posturing of the most zealous and vocal sections of that group. The trouble with the silent majority is that it is indeed silent, and therefore makes little impression.

### WHAT IMPRESSION THEN DOES EACH COMMUNITY HAVE OF THE OTHER?

Ulster 'protestants' do not fear nor mistrust Ulster 'catholics' because they are catholics but because they believe them to be Irish Nationalists — fifth columnists — uncommitted citizens, intent on the destruction of Northern Ireland in pursuit of a united CATHOLIC-GAELIC-IRISH NATIONALIST-REPUBLIC. Loyalists fear that if these Irish Nationalists are allowed any authority or position of 'power' within the political framework of Northern Ireland then they will use that 'power' and authority to undermine, or even overthrow the State to achieve their Nationalist ambitions. For this reason Loyalists have opposed, and will continue to oppose, any proposal or scheme which contains an 'Irish dimension' or which Loyalists believe is contrived by Irish Nationalists to either undermine the 'Union' with Great Britain or bring a United Ireland one step nearer.

"The Unionists are a majority in Northern Ireland, but their political behaviour there can only be understood if they are seen, as they feel themselves to be, as a threatened minority on the island of Ireland. Theirs are the politics of the besieged. Hence their stubborn refusal to share power with the minority in Northern Ireland, whom they fear as the Trojan horse of the real majority in Ireland, the catholics."

(JOHN HUME SDLP)

Ulster Loyalists live in a state of eternal siege; a people instinctively driven by the overpowering need to defend the frontiers against the enemy without, and to suppress the enemy within. Ulster 'catholics' generally believe that Ulster 'protestants' wish to preserve an ascendancy society; a religious and political hierarchy from which they are excluded, or 'alienated', for no apparent reason other than that they are catholics (the symptoms of mistrust and uncertainty are mistaken for bigotry and intransigence). A situation which 'catholics' resent bitterly, and have increasingly demonstrated that resentment.

## CATCH 22

The more Loyalists suspect 'Catholics' of being Irish Nationalists, the more defensive they become and close ranks. The more defensive 'Protestants' become, the more 'Catholics' believe themselves to be excluded and display disaffection and agitation usually through the medium of Irish Nationalism.

In turn 'Protestants' interpret the display of agitation as further evidence that the minority is nothing more than a bunch of 'rebels' and become even more defensive. And so it goes on.

The consequence is a stalemate situation where Protestants feel threatened, and Catholics feel alienated and dominated by a protestant majority. It creates a society that can not move forward, so it does not move. If we are to break this deadlock or if any proposed solution is to stand any serious chance of success then it must attempt to ensure two things:—

1. That Ulster 'Protestants' no longer feel compelled to defend the frontier.
2. That Ulster 'Catholics' support, and play a full role, in society.

Whilst we have no doubt that compromise and accommodation can be reached between Catholics and Protestants in Northern Ireland, it is impossible to compromise on the existence of Northern Ireland itself — it either exists or it doesn't. At present it exists and is a part of the United Kingdom. This situation may not be the whole-hearted wish of everyone in the province but must be recognised to be the wish of most. Surely then this is the logical place to make a beginning.

It is our firm conviction that the vast majority of both religious communities long for peace, reconciliation and the chance to create a better future for their children. But longing is not enough; there must be a mechanism created to harness the love, generosity, courage and integrity of Ulster people in both religious communities and direct its great power towards the light of a new beginning.

In an attempt to create such a mechanism we propose the following:—

- (a) Devolved legislative government for Northern Ireland and a written constitution. A set of constitutional laws, agreed by Ulster Catholics and Protestants together which would lay the foundations on which to build a new progressive democracy. An agreement instituted by Ulster people at referendum which can only be changed by Ulster people at referendum.
- (b) A modern democratic political structure based on consensus government, proportional representation and shared responsibility.
- (c) *A Bill of Rights.*
- (d) A supreme court charged with the responsibility to uphold constitutional law and safeguard the rights of the individual as represented in the Bill of Rights.

There is no section of this divided Ulster community which is totally innocent or indeed totally guilty, totally right or totally wrong. We all share the responsibility for creating the situation, either by deed or by acquiescence. Therefore we must share the responsibility for finding a settlement and then share the responsibility of maintaining good government.

J. McMICHAEL

## UNITY IN DIVERSITY

Northern Ireland is not unique because its inhabitants are in conflict. In every age and in every part of the globe, man has confronted man on every issue imaginable. Within comparatively recent times almost every country in Europe has experienced violent struggle because of serious ethnic, religious or class divisions in society. Stalemate, and the gradual acceptance that to continue the conflict was senseless and futile, forced the antagonists to negotiate a variety of settlements. Almost always the settlement took the form of a contract between the various parties (A WRITTEN CONSTITUTION).

Most modern democracies, which have emerged from conflict, are based on the sovereignty of the people. Elected representatives of the various sections of the population negotiated and agreed on what powers the citizens were prepared to devolve to their government, the structures of government and what safeguards to civil liberties were to be incorporated in the constitution. The main provisions of such agreements are often drawn up in one binding document (written constitution) which defines the structures and powers of government and the relationship between the several parts of government and between government and the citizen. In other words, the people lay down the ground rules inside which the politicians and civil servants are expected to operate; A set of rules which form the basic blueprint for society and which can be referred to for guidance when a dispute arises; A set of constitutional laws which can only be changed by the people, usually by means of a referendum. To ensure that no one faction, which may achieve a simple majority, could revoke or change any or all of the agreement it is established practice to employ some mechanism which ensures that the constitution cannot be amended except where there exists a proven consensus for change. Generally speaking, for a proposed constitutional amendment to succeed it requires the support of a considerable majority of the parliament (often at least  $\frac{2}{3}$ ) and then must be ratified by a majority in a referendum.

A considerable portion of most written constitutions relates to the protection of civil liberties and the relevant constitutional articles are commonly known as a Bill of Rights. For example the first nineteen articles of the Federal Republic of Germany define specific basic human rights.

Where a written constitution is established it is regarded as a morally and legally binding document. Should a government seek to introduce any measure which is regarded by any citizen or group of citizens to be in breach of the contract then that measure can be challenged through the courts. The judiciary has the power to overrule even an act of parliament if it is judged to be unconstitutional.

### THE UNITED KINGDOM AND THE WINDS OF CHANGE

The constitution of the United Kingdom is mainly an 'unwritten' one. It consists of the collection of all acts of parliament, parliamentary conventions and case law which exists at any one time. Parliament is absolutely sovereign and any statute can be passed or repealed by a simple majority in both Houses at Westminster. It is in fact an elected dictatorship.

The parliament of the U.K. could abolish jury trials, permit imprisonment without trial, abolish the welfare state, or enact an Anglo-Irish treaty without askance of, or accountability to anyone. No law enacted by parliament can be challenged, not even by the courts. There is no set of laws or rules to control the conduct of government.

This system of government has been successful for hundreds of years for a number of reasons which are no longer as valid as they once were; the United Kingdom was the centre of a vast economic empire which ensured that all parts of the kingdom shared relative prosperity; there existed a reasonably accepted balance of power between central and local government; the populace still had faith in the parliamentary process.

Yet, even in Great Britain, the winds of change are gathering force. Economic decline, racial tensions, massive unemployment, the breaking down of the two-party system and the growing dissatisfaction with increasing centralised authority are creating pressures and strains beyond the experience or capability of the present centralised political system.



"The greatest threat to the balance of powers and civil liberties in Britain comes not from a potential dictator but from a succession of government measures forced by pressure of circumstances which can be individually justified but which add up to a steady diminution of freedom".

(ALAN BEITH-LIB/SDP ALLIANCE)

There are growing demands for regionalisation in England, a devolved legislative assembly for Scotland is imminent, devolved administration for Wales will follow while electoral reform to P.R. and a Bill of Rights are inevitable. All these reforms, and many others, are on the political agenda and many in Great Britain recognise that the present constitution is totally inadequate to cope with this new set of circumstances.

"I have reached the conclusion that our constitution is WEARING OUT. Its central defects are gradually coming to outweigh its merits... I envisage nothing less than a written constitution for the United Kingdom".

(LORD HAILSHAM, THE LORD CHANCELLOR)

The United Kingdom is undoubtedly moving towards regionalisation and such a situation would require a written agreement defining the relationship between the various parts of this kingdom and how they should be governed

An opportunity exists for Northern Ireland to be in the vanguard of the coming age of constitutional reform within the United Kingdom. Where there is no change there is no democracy.

## CO-DETERMINATION

### (An Agreed Process Of Government For Northern Ireland)

Northern Ireland is a geographical and political entity and the majority of its citizens wish it to be part of the United Kingdom. This is one fundamental reality of the situation. Another fundamental reality is that Northern Ireland will never realise political and social stability until there is consensus on how it will be governed. We in Northern Ireland cannot remain isolated from the progressive changes in political practice and thinking developing in Europe generally and in the U.K. in particular. The hour has arrived for the representatives of the various Ulster minorities to appraise the situation pragmatically and talk to each other with a view to agreeing a process of government for Northern Ireland and entering into a contract with each other which both defines and guarantees that agreement. Others have done it before us, now it is our turn.

The task of formulating an agreed process for Northern Ireland will not, we recognise, be an easy one. It will be fraught with difficulties and will require political statemanship. Yet, if the various factions agree to embark on this great endeavour, an opportunity would be created by which 'Ulster Catholics' and 'Ulster Protestants' could co-determine the very nature of their society; how it would be shaped, and how it would be governed.

We propose the following steps as a mechanism to create that opportunity:—

#### Formulating the Constitution

1. The Secretary of State for Northern Ireland would invite all political parties to discuss the principle of creating a written constitution, and subsequent form of government.
2. If the various parties agree in principle, the Secretary of State would call an election for the parties to seek a mandate from the electorate for their attendance at a constitutional conference.
3. On a day decided in advance of the election, the newly elected representatives would convene the conference.
4. The Chairman of the conference would be appointed by the Secretary of State but must be ratified by the conference.
5. The conference would require expert assistance to prepare its draft constitution. It may consider inviting experts from the Commonwealth, the E.E.C., and the U.S.A. to act as advisers and observers.
6. The draft constitution would be ratified by the Conference, then it would be put to the people

for acceptance by means of a referendum. We recommend that the constitution should not be implemented, (nor amended once it has been ratified) unless it commands the support of not less than  $\frac{2}{3}$  of the voters in a constitutional referendum.

7. If the constitution is ratified by the people of Northern Ireland and the Westminster Parliament it would automatically become law and the conference would dissolve.
8. Elections would be held to the structures of government according to the articles of the constitution.
9. Northern Ireland would continue to return members of Parliament to Westminster using the present franchise.

## WHAT WOULD A CONSTITUTIONAL CONFERENCE DO?

The conference will be faced with the task of debating and resolving the most fundamental issues inherent in constructing a modern, pluralist and progressive democracy.

### ● GOVERNMENT

Perhaps the most difficult task facing the conference will be to agree on how Northern Ireland is to be governed;

- How should central and local government be structured?
- What powers should be given to the various parts of government?
- How and when would elections take place?
- What would be the relationship between the government of Northern Ireland and the government at Westminster?

A political structure which we believe may attract a wide consensus of support is outlined below.

### ● STRUCTURE OF GOVERNMENT

The people of Northern Ireland would elect representatives to a legislative assembly to govern on their behalf over all matters excepting those matters reserved by the Westminster parliament (e.g. national defence, and foreign affairs). The assembly would govern within the terms of the new constitution. Because Northern Ireland would have its own written constitution the people of Northern Ireland would, in many respects, be renegotiating the Act of the Union not to weaken that Union but to bring to it a more realistic and stable relationship.

### ● ELECTIONS

Elections to the legislative assembly and to local government councils would be held every four years using proportional representation, multi-constituency representation system of voting, as currently used in Northern Ireland.

### ● ASSEMBLY

The assembly would be the only body in Northern Ireland with the authority to legislate. Seats on each of the assembly committees would be appointed in such a way that each committee would directly reflect the proportional strength of the parties within the assembly. Committee Chairmen would be appointed using the same principle. (If a political party obtained 30% of the seats in the assembly, then that party would automatically be entitled (as far as it is arithmetically possible) to 30% of the seats and chairmanships of the committees).

An illustration of how committee chairmanship could be allocated can be found on page 6.

### ● EXECUTIVE

Seats on the executive government committee would be allocated (as far as it is arithmetically possible) using the same principle of proportional representation within the assembly.

(An illustration of how appointments to the executive committee could be allocated can be found on page 6).

The acceptance of the practice of proportionality at all levels of government would change the very nature of politics in Northern Ireland. For the first time the people would effectively and directly determine the make-up of the executive by their votes. Coalition is now the practice rather than the exception in modern pluralist societies. We have become so accustomed to equating democracy with majority rule that we tend to forget that majority rule is democratic only when there is alteration in office or when there is broad consensus for it. Majority rule in deeply divided societies is likely to be profoundly undemocratic, and the only democratic system is one

that allows participation in government by coalition of all groups, majority and minority, on a more or less permanent basis. In such a coalition agreement a duty would be placed on the minority participants to clearly demonstrate their unreserved support for the constitution, the political institutions of the state and law and order.

● **THE ELECTION OF AN EXECUTIVE AND OF COMMITTEE CHAIRMEN**

(The following is a selected and edited part of a paper by Sidney Elliot — Q.U.B.).

Any devolved government in Northern Ireland faces formidable problems which might be delayed by dispute about how to constitute itself. Given the degree of segmented distrust the use of an electoral device might be recognised as fair and have the merit of being automatic. This paper, therefore, seeks to apply one of a number of well known electoral formulae to the selection of an Executive and committee chairmen.

An electoral mechanism must determine two things, namely, the party composition of the membership of the assembly and the allocation of specific offices and departments between them. The approach illustrated below requires the Assembly to elect the required number directly to a specific post.

To illustrate the effect of the electoral formula some assumptions have to be made. It is assumed here that there will be ten executive seats and that it will reflect the current civil service departmental organisation. The departments are therefore assumed to be — Administration of Justice, Economic Development, Agriculture, Environment, Health & Social Services, Education, Finance & Personnel. In addition, it is assumed that there will be a Chief Executive, a Deputy Chief Executive and a Minister without Portfolio (perhaps to keep an eye on reserved matters). (\*We have substituted the office of whip suggested by Mr. Elliot in his paper, with that of an Administration of Justice).

For the purpose of illustration the party representation and share of the vote is assumed to be that prevailing in the Assembly in October 1982. The method requires the direct election of each post in the Executive by the 78 members of the Assembly. The political representation in the Assembly is 26 Official Unionists, 21 Democratic Unionist, 14 Social Democratic & Labour, 10 Alliance, 5 Sinn Fein, 1 Ulster Popular Unionist and 1 Independent Unionist.

D'Hondt Rule

The votes of each party are divided successively by 1, 2, 3, 4, etc. and put in a table. The choice of seats on the Executive is then allocated in order of the largest numbers.

TABLE 1

DIVISOR	OUP	UDUP	SDLP	APNI	SF	UPUP	INDU
1	26*	21*	14*	10*	5	1	1
2	13*	10.5*	7*	5	2.5	0.5	0.5
3	8.7*	7*	4.7	3.3	1.7	0.3	0.3
4	6.5*	5.3	3.5	2.5	1.3	0.3	0.3

Hence the party composition of the Executive would have been 4 OUP, 3 DUP, 2 SDLP, 1 APNI, and the order of election as follows:—

TABLE 2

	*		
1st CHOICE	26	OUP	CHIEF EXECUTIVE
2nd CHOICE	21	UDUP	DEPUTY CHIEF EXECUTIVE
3rd CHOICE	14	SDLP	ADMINISTRATION OF JUSTICE
4th CHOICE	13	OUP	ECONOMIC DEVELOPMENT
5th CHOICE	10.5	UDUP	AGRICULTURE
6th CHOICE	10	APNI	ENVIRONMENT
7th CHOICE	8.7	OUP	HEALTH & SOCIAL SERVICES
8th CHOICE	7	UDUP	EDUCATION
9th CHOICE	7	SDLP	FINANCE & PERSONNEL
10th CHOICE	6.5	OUP	MINISTER WITHOUT PORTFOLIO

The same method would elect the chairmen of committees.

### ● A BILL OF RIGHTS

This would be an essential part of the constitution. All local political parties (except Sinn Fein) have accepted, at least in principle, the need for a Bill of Rights in Northern Ireland. The conference could formulate its own set of articles relating specifically to basic human rights or it could agree to adopt the European Convention on Human Rights into the constitution. Obviously nothing could be entered into the constitution which would adversely affect the rights of other citizens in the United Kingdom or EEC.

### ● ADMINISTRATION OF JUSTICE

The conference would formulate a set of articles in the constitution dealing specifically with the administration of justice; specifying the various courts, their structures, powers and jurisdiction; the mechanism for appointing judges and their term of office. Because the judiciary will become the supreme arbiter between the people and government it is obvious that there will be a need for the creation of a supreme court qualified and competent to deal with issues relating to constitutional law and human rights.



## EQUAL CITIZENSHIP

### POLITICAL PARTIES OF GREAT BRITAIN

It is not widely known that the main British political parties (i.e. Conservative and Labour Parties) do not permit Ulster people to join these parties. The SDP allow Ulster people party membership but refuse to organise candidates in Northern Ireland. The Liberal party alone does not exclude either membership or organisation in Northern Ireland.

Although we canvass for a written constitution to define the authority of government and therefore political parties, we believe the party system to be an essential part of the process of government and change.

As we see it, the Ulster people will be able to affect their society through the constitution, the local assembly and Westminster, but without the freedom to participate in the British party system, an integral part of the political process will be denied to them. For it is through the party system that Ulster people of all political persuasions can assert influence at Westminster, whether it is through the ruling party or opposition. After all, the parties will all seek to be represented in the devolved assemblies of Scotland and Wales.

Ulster people may well find it strange that British political parties suggest that we turn away from 'sectarianism', yet refuse to provide organised alternatives for the Northern Ireland electorate.

When the constitution for Northern Ireland is settled we would hope that the political divisions between the parties would be based on social and economic doctrine rather than Unionist versus Irish Nationalist or Catholic versus Protestant. To that end it would be beneficial if the national political parties grasped the nettle and helped to bring about the necessary transition by becoming organisationally involved in Northern Ireland.

## CONCLUSION

A written constitution would not be a magic formula to solve all the problems of Northern Ireland overnight. But it would provide an agreed morally and legally binding contract between the various peoples of this province; a foundation on which to build a new pluralist society. The rest will depend on the integrity and statesmanship of the political leaders of this community.

The fact that Northern Ireland's 'status' within the United Kingdom could not be changed without the consent of at least two thirds of those voting in a referendum would raise the siege on 'Ulster Protestants' and create a new atmosphere of security and stability conducive to reconciliation and political development. A Northern Ireland existing by consent would remove the need to constantly defend the psychological border.

Our proposals do not in any way deny any section of the community its aspirations. Any group which aspires to a united Ireland, an independent Ulster or any other constitutional change may achieve its objective if it commands a broad consensus of support for change.

"No sane person could wish to change the status of Northern Ireland without the consent of the majority of its people. That would be a recipe for disaster and could, I believe, lead only to civil war, that would be destructive of the life of people throughout our island".  
(Dr. Garrett Fitzgerald — Irish Times, 20th November 1985)

It is our contention that it would be a recipe for disaster and probable civil war if the 'status' of Northern Ireland were to be changed without the consent of the majority of each of the two main communities.

The fact that the new political structure, ensuring consensus and coalition, and the constitutional articles protecting basic human rights could not be revoked or changed without the support of at least two thirds of those voting in a referendum, would dispel the fear of exclusion felt by the 'Ulster Catholic' community and allow all minorities to play a full and productive role in our society.

FOR PERHAPS THE FIRST TIME IN THE HISTORY OF NORTHERN IRELAND THE SAME PROTECTIVE MEASURE COULD BE MADE TO WORK FOR BOTH PROTESTANTS AND CATHOLICS. THAT PROTECTIVE MEASURE WOULD BE THEIR MUTUALLY AGREED CONSTITUTION.

Such a settlement by consent, would release those in political life from the treadmill of 'border' politics and allow them to use their various talents to tackle the real enemies which confront and terrorise the whole community:— Social deprivation, economic recession, unemployment, the need for more housing and the breakdown of respect for law and order. To overcome such formidable obstacles Northern Ireland will need a coalition of all the talents and resources that Ulster people can provide.

"LAW IS NOT WITHOUT MORAL INFLUENCE: IT SETS A STANDARD FOR BOTH THE PUBLIC AND THE POLITICIANS... SO TO WRITE THE COALITION IDEA INTO THE FORMING OF A GOVERNMENT IN PLACE OF THE PRESENT GOVERNMENT VERSUS OPPOSITION IDEA WOULD IN ITSELF BE QUITE A STEP FORWARD".  
(Sir Arthur Lewis-Nobel Prize Winner)

The pragmatic alternative to co-determination is to fight a bloody civil war and let the victor dictate the rules by which we will live.

What we propose will probably be described by some as idealistic, ambitious, fraught with difficulties and even dangerous to attempt: but so then has anything that was ever worth doing. The most dangerous thing to do, and unfortunately the most politically popular, would be to do NOTHING.

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APPENDIX E

AN END TO THE DRIFT

**THE TASK FORCE REPORT**

# **AN END TO DRIFT**

**AN ABRIDGED VERSION OF THE REPORT  
PRESENTED TO  
MR. MOLYNEAUX & DR. PAISLEY  
16th JUNE, 1987.**

16th June 1987

To MR. MOLYNEAUX and DR. PAISLEY  
From HAROLD McCUSKER, PETER ROBINSON and FRANK MILLAR.

## REPORT FROM THE UNIONIST TASK FORCE

On 23 February 1987 you requested us to consult with the widest possible range of interest groups within the pro-union community —

- (1) To secure support for the continuing campaign against the Anglo-Irish Agreement, and
- (2) To ascertain what consensus, if any, exists about alternatives to the Agreement.

To this end we have had discussions with.

*The Archbishop of Armagh, Dr. Robin Eames*  
*The Moderator of the Presbyterian Church, Rev. Dr. John Thompson*  
*The New Ulster Political Research Group*  
*The Charter Group*  
*The Ulster Clubs*  
*The Independent Orange Order*  
*The Orange Order*  
*The Royal Black Institution*  
*The Campaign for Equal Citizenship*  
*Mr. Jim Smyth*  
*Mr. Roger Corry*  
*Dr. Clifford Smyth*  
*The Progressive Unionist Party*  
*The Ulster Young Unionist Council*  
*The Chamber of Commerce and Industry*  
*The Apprentice Boys of Derry*  
*The Northern Consensus Group*  
*The Confederation of British Industry*

In addition we have received and considered over 100 written submissions from concerned and interested individuals.

We are grateful to all those who participated in what has undoubtedly been the most exhaustive — and, we think, the most honest — analysis by Unionists of their position and prospects in the period post Hillsborough.

Some of those we met presented papers outlining their position, and at an early stage we considered publishing these as an appendix to our own report. However most people elected to speak to us on a confidential 'off the record' basis. This facilitated an openness and candour not always possible under the gaze of public scrutiny.

In consequence we make no attempt here to rehearse or represent the detail of the views received. Rather we will convey the broad themes which emerged in the course of our undertaking.

Our original brief identified two major areas for investigation and we received substantial opinion about both. However it is certainly the case that the burden of our discussions focused on the search for an alternative to the Agreement.



We make this observation at the outset to register the depth of anxiety which extends within the Unionist community, and the determination of most of those we met that protest can be no substitute for politics.

That in itself is a major finding of our report.

## HISTORICAL BACKGROUND

Since the late 1960s Unionism has lost a series of vital rounds in the battle to preserve Northern Ireland's position within the United Kingdom.

Much ground was lost during the Civil Rights crisis itself. The highly simplistic notion of Protestant 'guilt' and Catholic 'grievance' persists to the present day, and this despite the fact that since 1972 the government of Northern Ireland has been the exclusive preserve of the Westminster Parliament.

This dismantling of our security base and the fall of Stormont paved the way for a Whitehall machine unashamedly neutral on the issue of the constitutional position. All that has followed since is symptomatic of the policy carved and created by Lord Carrington on behalf of Edward Heath. *'Her Majesty's Government has no desire to impede the realisation of Irish unity.'*

The minority Labour Government of James Callaghan offered a brief respite

increased parliamentary representation and a more robust security policy did much to reassure Unionists: Direct Rule was apparently giving way to gradual integration and the Conservative Party in Opposition had elected a leader who seemed set to complete the process.

However, Article One of the Anglo-Irish Agreement confirms that under Mrs. Thatcher's administration the wheel has turned full circle.

It is a matter of record that Airey Neave's Ulster policy died with him just weeks before the 1979 General Election.

Mr. Atkins' round table conference, followed by Mr. Prior's scheme for Rolling Devolution, were a far cry from the Regional Council promised in the Conservative Party's 1979 Manifesto.

But if some Unionists were slow to accept even this evidence of a move away from Integration, Mrs. Thatcher's rhetoric and her ability to distance herself from decisions of her own Government, provide at least part explanation.

For a long time Mrs. Thatcher's pragmatism was kept well concealed from her own natural Conservative supporters. Having declared herself *"rock firm for the Union"* and Northern Ireland *"as British as Finchley"*, it isn't hard to see why beleaguered Unionists chose for so long to give her her the benefit of the doubt.

Mrs. Thatcher, some rationalised, was consumed by economic concerns and would hardly have addressed herself to the peripheral issue of Northern Ireland. Policy pursued in her name certainly didn't reflect her personal view and in all probability had not obtained her seal of approval.

When Mrs. Thatcher forthrightly rejected the principal findings of the Forum Report, the exponents of this view proclaimed themselves well satisfied.

The Union appeared once more secure!

With hindsight it may be said that Mrs. Thatcher did Northern Ireland few favours with her famous *"out, out, out"* declaration. Whilst significant policy initiatives were signalled by the two Unionist parties in *"The Way Forward"* and *"Ulster The Future Assured"*, they were not pursued with sufficient vigour.

Dr. Paisley offered their alternative British-Irish scenario in August 1985, the dye was cast.

Mrs. Thatcher was set on confrontation with the Unionist community, and media critics, quite unjustifiably, said Unionists had offered too little, too late.

To Unionists themselves of course the opposite appeared all too obviously the case. Few outsiders can understand the bitterness and indignation of Unionists unfairly characterised as *the guilty party in the Ulster conflict*.

A supporter of the police and a devotee of the democratic process, the average Unionist has had to witness the impotence of lawful authority and the inadequacy of democratic safeguards in face of violent political rebellion.

The Stormont Parliament had been successfully discredited as the keeper of Protestant privilege. Its demise paved the way for a form of colonial rule which violates the fundamental rights and entitlements of all the people of Northern Ireland as citizens of the United Kingdom.

Security powers were removed from Stormont and the RUC placed under the direct control of a Westminster which more than once has sanctioned negotiations with the Provisional IRA.

In Town Halls across the province the denial of real local democracy pales beside the presence of an army of Sinn Fein Councillors bent on the destruction of Northern Ireland *"with an armalite in one hand and a ballot paper in the other"*.

The catalogue of injury and insult is endless. The net effect is a community increasingly confused as to what is and what is not acceptable in a democratic society; a community torn between loyalty to the law and established order, and the compelling conclusion that violence and anarchy are the likeliest route to political reward.

At various times in the past eighteen years it has looked as if the populous might take matters into their own hands. Indeed they did so in 1974. Unfortunately the Sunningdale Agreement fell without any understanding or agreement as to what should take its place.

Murder at Darkley and a succession of other atrocities brought the province periodically back to the brink. However no single issue or event captured the public mood or provided the dynamic for change evidenced in 1974 — until the Anglo-Irish Agreement.

The Unionist leadership in Northern Ireland reacted to the Agreement with clarity and conviction.

On the evening of 15 November 1985 Mr. Molyneux described it as *"the beginning of the end of the Union as we have known it"*. He and Dr. Paisley pledged to resist to the end "an emergent joint authority" and that same evening set in motion a chain of events designed to manifest the absence of Unionist consent for the system by which Northern Ireland was to be governed.

Any doubt about the attitude of the community generally was effectively dispelled at the City Hall on Saturday November 23rd, 1985.

Some 203,000 people rallied to the joint leadership's call and gave an emphatic "NO" to the Agreement. Less than two months later Unionist candidates received the endorsement of 420,000 electors for their proposed campaign of resistance.

The leadership and the community were united in an historic purpose, and it is salutary to recall that those most hostile to Unionist unity conveniently and

consistently ignore the fact that Unionist politicians have acted at all times in accordance with a policy put to, and endorsed by, the people. All those we met confirmed their view that this unity of purpose is entrenched in the community at large.

## **THE CAMPAIGN AGAINST THE AGREEMENT**

We have received much opinion and advice about the Unionist campaign against the Agreement. For us the remarkable thing is that the views received reflect an across the board desire to make the anti-Agreement movement more effective.

None of those we met counselled capitulation. Where they were critical, their criticism reflected only the conviction that they have and know a better way.

Our various meetings established also a common irritation with the casual, and often contemptuous, manner in which the dignified and constitutional protests of a whole community have been received and treated.

Members of Parliament have been imprisoned. Otherwise law abiding citizens have decided to withhold revenues from central government in (as yet) token civil disobedience. Local government business has been sustained only by the intervention of Government nominees, in a province denied the principles, practices and procedures which obtain in every other part of the State to which it belongs.

Such "withdrawal of consent" in Johannesburg or Soweto would win rave reviews in the British national press. In Northern Ireland, in pursuit of Unionist objectives, it is the pretext for cruel cynicism and abuse. We do not intend to fuel or facilitate that cynicism by detailing here our considered views about the protest campaign.

The generality of our final recommendations is indicated in due course.

## **ALTERNATIVES TO THE AGREEMENT**

In all discussions about possible alternatives to the Agreement we made plain our view.

- (1) That the early suggestion by Mrs. Thatcher that the Agreement could be "devolved away" does not accord with the terms of the Agreement itself
- (2) That the Agreement establishes clear, and in our view unrealistic, limits on the powers which might be devolved, and
- (3) That Unionists could not contemplate participation in any form of devolved government whose work and functions would be supervised and overseen by an Anglo-Irish Conference.

We encountered little disagreement in regard to these matters.

Whilst we retained the suspicion that one group to whom we spoke would eventually come to terms with whatever Westminster requires, otherwise those we met accepted that the scope for possible Unionist concessions in negotiation is extremely limited, and that failure by Westminster to meet the Unionist community half way in the quest for a reasonable alternative would have profound consequences for the existing constitutional relationship between Britain and Northern Ireland.

Only one group invited us to consider as a serious proposition the return of majority rule devolution within the United Kingdom. Our expressed incredulity prompted them in turn to speculate as to the viability of independence and repartition.

Certainly none of the others were prepared to consider repartition as an option.

However we have to report that negotiated independence features increasingly in serious discussion of a possible way forward.

The Campaign for Equal Citizenship advanced their view, previously publicly known that the real choice lies between *integration and independence*. Those favouring devolution were equally clear that independence must be considered if the British Government rejects a serious and genuine attempt by the Unionist community to devise a reasonable alternative to the Agreement.

The burning question for politicians of course is precisely what might constitute a "reasonable alternative".

Regardless of its origins, the UDA document "Common Sense" has attracted considerable interest and some support.

This may have less to do with the detail or the particular merits of the UDA proposal than with a general perception that they have addressed some of the hard political questions which some politicians would choose to ignore.

Many in addition to the UDA would clearly be prepared to contemplate SDLP participation in the Government of Northern Ireland *provided* the SDLP agreed to forfeit the role of the Government of the Irish Republic as custodians of the nationalist interest.

There is general support too for the proposition that a Government in Northern Ireland without control of internal security would be unworthy of the name.

The discussions we now report obviously invite the Unionist leadership to contemplate variations of political structures for Northern Ireland which they, and we, have previously rejected.

Time moves on and circumstances change. We found no suggestion that Unionists should be ashamed to adapt to changing circumstances.

We certainly do not intend "adapting to changed circumstances" to serve as cover for "sold out" or "betrayal". This is why we were at pains to register with all those we met our determination that the Unionist leadership could not permit itself to be sucked into an endless process of compromise and concession.

Specifically we told Churchmen, and the leaders of trade and industry, that failure to agree with Parliament an alternative basis for the government of Northern Ireland within the United Kingdom would confront the whole community with the painful choice — to accept the Anglo-Irish Agreement as the price for the Union or to negotiate a new constitutional basis for Northern Ireland.

They agreed. And we were gratified to find a ready acknowledgement by those to whom we have specifically referred that in such an event they could not continue to occupy their current public position as almost neutral observers of the political scene but would have to identify themselves rather with a community engaged in a life and death struggle for the right to self-determination.

The Campaign for Equal Citizenship would endorse the demand for self-determination and they enjoy the benefits of a popular policy well rooted in the history of the Unionist movement.

However the CEC is wedded to a rigid definition of equality not shared even with the two other organisations — the Young Unionist Council and the Royal Black Institution — representing an integrationalist position.

A clear majority were agreed that mainland parties would not be persuaded to extend their organisation to Northern Ireland and that, in any event, such a development would not secure or "copper fasten" the Unionist interest.

We confessed to some mystification as to the intentions of the CEC but were assured their concern is to seize "the high moral ground" from nationalism.

In fairness to the CEC we should also make it clear that they disdain creeping or cosmetic integration. Their determination, as we understand it, is that Westminster must either govern Northern Ireland like every other part of the United Kingdom or forfeit all claims in respect of the government of the province.

We asked the CEC representatives if any who had embraced the concept of equal citizenship could in fact accept the idea of a time limit. In other words we put it to them that whilst they spoke of integration or independence, by its very nature the Campaign for Equal Citizenship was an open-ended affair.

However the CEC delegates were adamant that if a serious and sustained campaign for integration was mounted, and manifestly failed, they would then seek to negotiate the province's independence.

When we probed the question of time-scale we found some CEC members less than specific. However, the implication was that by the end of the next (this) Parliament (assuming a full term) the answer would be clear, one way or the other.

We frankly would see great difficulty holding the community together over such a protracted period. We believe moreover that if the Anglo-Irish Agreement can survive such a time, it will in all probability prove immovable.

However we consider this aspect of the CEC's proposals important.

## CONCLUSIONS

We have found absolutely no lessening in the Unionist community's antipathy to the Anglo-Irish Agreement. At the same time our investigations have unearthed deep disquiet about the current protest campaign and a simple disbelief that on its own it can or will persuade Mrs. Thatcher to change course.

There is recognition that Northern Ireland's position within the Union has been steadily and successfully undermined since the late 1960s.

Our various discussions pointed to the need for action to arrest a widely perceived drift in our affairs. This demand for action is tempered by a realistic appraisal of the limits of Unionism's negotiating strength and, on the other hand, by anxiety that a commitment to negotiate "a reasonable alternative" should not be construed, in London or elsewhere, as evidence of a willingness to come to terms with the Agreement itself.

The temptation in such circumstances might be to do nothing. However we would consider this the ultimate abdication of responsibility.

It seems to us that those who counsel against negotiation must make plain the alternative means by which they propose to determine the future of the people of Northern Ireland. Reliance on other people to undertake a campaign of violence which can be disowned, but from which can be extracted political advantage, would be disreputable and dishonest in the extreme.

For our part we are confident that Unionists have the ability to recognise the point in negotiation beyond which the search for consensus about the future government of Northern Ireland becomes damaging to the Unionist interest.

Negotiation need not be the precursor to "sell out" or "betrayal". Indeed the assumption that Unionists must inevitably be bested in any negotiations can only reflect the judgment of those who have already sold out and accepted defeat. We must give hope to a community dangerously immune to disappointment and defeat.

Our opinion survey confirmed that the policy of total integration continues to attract substantial support in the Unionist community. However, the survey also confirms our view that the Whitehall establishment is strongly opposed to such a course and that devolution is the more attainable objective.

All the principal parties in Britain favour Irish unity, which cause has been advanced and enhanced by fifteen years of Direct Rule.

We cannot believe that constitutional security is to be found in a campaign to persuade mainland political parties to extend their organisation to Northern Ireland. We believe that only a government representative of and answerable to the people of the province can properly understand and respond to the continuing terrorist campaign. Devolved-government therefore is our objective and whilst we hope this will prove attainable within the context of the United Kingdom, Unionists would be wise and prudent to anticipate that it might not.

We are convinced and agreed that the Anglo-Irish Agreement represents a fundamental and unacceptable change in the constitutional relationship between Great Britain and Northern Ireland. We have no doubt that the Anglo-Irish Conference is tantamount to joint authority and that its early demise is vital if we are to arrest a quickening process leading to our inevitable absorption in an Irish unitary State. *Having sworn never to accept the Agreement as a basis for continued membership of the United Kingdom, we must ascertain what alternative terms for the Union can be found.*

Recognising the inadequacies of the existing protest campaign we propose the creation of a Unionist Convention to construct and lead a renewed campaign to manifest the absence of consent for the arrangements by which Northern Ireland is presently governed.

In addition we suggest that the Unionist Convention be invited to endorse the demand for an alternative to and replacement of the Anglo-Irish Agreement, and the commencement of "without prejudice" discussions with Her Majesty's Government thereto.

We see a clear distinction between such discussions and formal negotiations, and ask you to appoint a panel to establish whether a base for formal negotiations exists or can be established.

In order to protect and reserve your position we recommend that the said panel be appointed *only* to consult and report.

In the course of our investigation it has become apparent that some people fail to understand the nature and basis of negotiation. We repeat our view that Unionists would be foolhardy to reveal their hand ahead of negotiation and whilst two of the parties, Her Majesty's Government and the SDLP, continue to set the pre-condition that political development in Northern Ireland must fall within the framework of the Anglo-Irish Agreement.

However we submit that in earnest of your desire to find a reasonable alternative you should signal that *no matter* could or should be precluded from any negotiations.

In addition, and in order to prevent any misunderstanding or confusion amongst your own supporters, we believe you should draw public notice to plans and proposals you have previously offered as a base for negotiation.

Specifically in this regard we have in mind the Catherwood Plan in which both Unionist parties abandoned pure majority rule as the price for Devolution, and your correspondence with the Prime Minister in August and September 1985 in which you pledged your willingness to negotiate a British/Irish framework for the promotion of friendship and co-operation within these islands.

In our opinion this emphasis on Unionist flexibility must be balanced by clear and repeated warning that the expedient of compromise and barter can only succeed if it is a two way process.

In advance of any negotiation we feel it must be made plain that failure to arrive at consensus would leave the Unionist leadership no alternative but to seek an entirely new base for Northern Ireland *outside* the present constitutional context.

To this end it should be observed that Article 1 of the Anglo-Irish Agreement itself purports to recognise and safeguard the right of the people of Northern Ireland to self-determination.

In reality of course Article 1 concerns itself only with a decision by the majority of the people of Northern Ireland either to remain within the United Kingdom or alternatively to join the Irish Republic. However it seems to us inescapable that the same Article could be invoked to give effect to a majority decision in favour of some other alternative.

We offer no precise or definite suggestion as to what that alternative might be. But we are convinced that, whatever the intentions of the Governments in London and Dublin, membership of the United Kingdom or membership of an Irish Republic are not the only options available to the people of Northern Ireland.

In this regard we propose the appointment of a Special Commission to consider and advise upon those alternative constitutional models, their implications viz a viz future relationships with Britain and the Irish Republic, and the steps by which an alternative constitutional arrangement might be secured and sustained.

APPENDIX F

THE ANGLO-IRISH AGREEMENT



ANGLO-IRISH AGREEMENT 1985

between

THE GOVERNMENT OF IRELAND

and

THE GOVERNMENT OF  
THE UNITED KINGDOM

The Government of Ireland and the Government of the United Kingdom:

Wishing further to develop the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Community;

Recognising the major interest of both their countries and, above all, of the people of Northern Ireland in diminishing the divisions there and achieving lasting peace and stability;

Recognising the need for continuing efforts to reconcile and to acknowledge the rights of the two major traditions that exist in Ireland, represented on the one hand by those who wish for no change in the present status of Northern Ireland and on the other hand by those who aspire to a sovereign united Ireland achieved by peaceful means and through agreement;



Reaffirming their total rejection of any attempt to promote political objectives by violence or the threat of violence and their determination to work together to ensure that those who adopt or support such methods do not succeed;

Recognising that a condition of genuine reconciliation and dialogue between unionists and nationalists is mutual recognition and acceptance of each other's rights;

Recognising and respecting the identities of the two communities in Northern Ireland, and the right of each to pursue its aspirations by peaceful and constitutional means;

Reaffirming their commitment to a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance, and with the opportunity for both communities to participate fully in the structures and processes of government;

Have accordingly agreed as follows:

## A

### STATUS OF NORTHERN IRELAND

#### ARTICLE 1

The two Governments

(a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland;

(b) recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;

(c) declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

B

THE INTERGOVERNMENTAL  
CONFERENCE

ARTICLE 2

- (a) There is hereby established, within the framework of the Anglo-Irish Intergovernmental Council set up after the meeting between the two Heads of Government on 6 November 1981, an Intergovernmental Conference (hereinafter referred to as "the Conference"), concerned with Northern Ireland and with relations between the two parts of the island of Ireland, to deal, as set out in this Agreement, on a regular basis with
- (i) political matters;
  - (ii) security and related matters;
  - (iii) legal matters, including the administration of justice;
  - (iv) the promotion of cross-border co-operation.
- (b) The United Kingdom Government accept that the Irish Government will put forward views and proposals on matters relating to Northern Ireland within the field of activity of the Conference in so far as those matters are not the responsibility of a devolved administration in Northern Ireland. In the interest of promoting peace and stability, determined efforts shall be made through the Conference to resolve any differences. The Conference will be mainly concerned with Northern Ireland; but some of the matters under consideration will involve cooperative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland may also be found to have application by the Irish Government. There is no derogation from the sovereignty of either the Irish Government or the United Kingdom Government, and each retains responsibility for the decisions and administration of government within its own jurisdiction.

### ARTICLE 3

The Conference shall meet at Ministerial or official level, as required. The business of the Conference will thus receive attention at the highest level. Regular and frequent Ministerial meetings shall be held; and in particular special meetings shall be convened at the request of either side. Officials may meet in subordinate groups. Membership of the Conference and of sub-groups shall be small and flexible. When the Conference meets at Ministerial level an Irish Minister designated as the Permanent Irish Ministerial Representative and the Secretary of State for Northern Ireland shall be joint Chairmen. Within the framework of the Conference other Irish and British Ministers may hold or attend meetings as appropriate: when legal matters are under consideration the Attorneys General may attend. Ministers may be accompanied by their officials and their professional advisers: for example, when questions of security policy or security co-operation are being discussed, they may be accompanied by the Commissioner of the Garda Síochána and the Chief Constable of the Royal Ulster Constabulary; or when questions of economic or social policy or co-operation are being discussed, they may be accompanied by officials of the relevant Departments. A Secretariat shall be established by the two Governments to service the Conference on a continuing basis in the discharge of its functions as set out in this Agreement.

### ARTICLE 4

- (a) In relation to matters coming within its field of activity, the Conference shall be a framework within which the Irish Government and the United Kingdom Government work together
  - (i) for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and
  - (ii) for peace, stability and prosperity throughout the island of Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation.
- (b) It is the declared policy of the United Kingdom Government that responsibility in respect of certain matters within the powers of the Secretary of State for Northern Ireland should be devolved within Northern Ireland on a basis which would secure widespread acceptance throughout the community. The Irish Government support that policy.
- (c) Both Governments recognise that devolution can be achieved only with the co-operation of constitutional representatives within Northern Ireland of both traditions there. The Conference shall be a framework within which the Irish Government may put forward views and proposals on the modalities of bringing about devolution in Northern Ireland, in so far as they relate to the interests of the minority community.

## POLITICAL MATTERS

## ARTICLE 5

- (a) The Conference shall concern itself with measures to recognise and accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and to prevent discrimination. Matters to be considered in this area include measures to foster the cultural heritage of both traditions, changes in electoral arrangements, the use of flags and emblems, the avoidance of economic and social discrimination and the advantages and disadvantages of a Bill of Rights in some form in Northern Ireland.
- (b) The discussion of these matters shall be mainly concerned with Northern Ireland, but the possible application of any measures pursuant to this Article by the Irish Government in their jurisdiction shall not be excluded.
- (c) If it should prove impossible to achieve and sustain devolution on a basis which secures widespread acceptance in Northern Ireland, the Conference shall be a framework within which the Irish Government may, where the interests of the minority community are significantly or especially affected, put forward views on proposals for major legislation and on major policy issues, which are within the purview of the Northern Ireland Departments and which remain the responsibility of the Secretary of State for Northern Ireland.

## ARTICLE 6

The Conference shall be a framework within which the Irish Government may put forward views and proposals on the role and composition of bodies appointed by the Secretary of State for Northern Ireland or by Departments subject to his direction and control including

the Standing Advisory Commission on Human Rights;

the Fair Employment Agency;

the Equal Opportunities Commission;

the Police Authority for Northern Ireland;

the Police Complaints Board.

D

SECURITY AND RELATED MATTERS

ARTICLE 7

- (a) The Conference shall consider
  - (i) security policy;
  - (ii) relations between the security forces and the community;
  - (iii) prisons policy.
- (b) The Conference shall consider the security situation at its regular meetings and thus provide an opportunity to address policy issues, serious incidents and forthcoming events.
- (c) The two Governments agree that there is a need for a programme of special measures in Northern Ireland to improve relations between the security forces and the community, with the object in particular of making the security forces more readily accepted by the nationalist community. Such a programme shall be developed, for the Conference's consideration, and may include the establishment of local consultative machinery, training in community relations, crime prevention schemes involving the community, improvements in arrangements for handling complaints, and action to increase the proportion of members of the minority in the Royal Ulster Constabulary. Elements of the programme may be considered by the Irish Government suitable for application within their jurisdiction.
- (d) The Conference may consider policy issues relating to prisons. Individual cases may be raised as appropriate, so that information can be provided or inquiries instituted.

## E

### LEGAL MATTERS, INCLUDING THE ADMINISTRATION OF JUSTICE

#### ARTICLE 8

The Conference shall deal with issues of concern to both countries relating to the enforcement of the criminal law. In particular it shall consider whether there are areas of the criminal law applying in the North and in the South respectively which might with benefit be harmonised. The two Governments agree on the importance of public confidence in the administration of justice. The Conference shall seek, with the help of advice from experts as appropriate, measures which would give substantial expression to this aim, considering inter alia the possibility of mixed courts in both jurisdictions for the trial of certain offences. The Conference shall also be concerned with policy aspects of extradition and extra-territorial jurisdiction as between North and South.

## F

### CROSS-BORDER CO-OPERATION ON SECURITY, ECONOMIC, SOCIAL AND CULTURAL MATTERS

#### ARTICLE 9

- (a) With a view to enhancing cross-border co-operation on security matters, the Conference shall set in hand a programme of work to be undertaken by the Commissioner of the Garda Síochána and the Chief Constable of the Royal Ulster Constabulary and, where appropriate, groups of officials, in such areas as threat assessments, exchange of information, liaison structures, technical co-operation, training of personnel, and operational resources.

- (b) The Conference shall have no operational responsibilities; responsibility for police operations shall remain with the heads of the respective police forces, the Commissioner of the Garda Síochána maintaining his links with the Minister for Justice and the Chief Constable of the Royal Ulster Constabulary his links with the Secretary of State for Northern Ireland.

#### ARTICLE 10

- (a) The two Governments shall co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and shall consider the possibility of securing international support for this work.
- (b) If it should prove impossible to achieve and sustain devolution on a basis which secures widespread acceptance in Northern Ireland, the Conference shall be a framework for the promotion of co-operation between the two parts of Ireland concerning cross-border aspects of economic, social and cultural matters in relation to which the Secretary of State for Northern Ireland continues to exercise authority.
- (c) If responsibility is devolved in respect of certain matters in the economic, social or cultural areas currently within the responsibility of the Secretary of State for Northern Ireland, machinery will need to be established by the responsible authorities in the North and South for practical co-operation in respect of cross-border aspects of these issues.

#### G

#### ARRANGEMENTS FOR REVIEW

#### ARTICLE 11

At the end of three years from signature of this Agreement, or earlier if requested by either Government, the working of the Conference shall be reviewed by the two Governments to see whether any changes in the scope and nature of its activities are desirable.

H

## INTERPARLIAMENTARY RELATIONS

### ARTICLE 12

It will be for Parliamentary decision in Dublin and in Westminster whether to establish an Anglo-Irish Parliamentary body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981. The two Governments agree that they would give support as appropriate to such a body, if it were to be established.

I

## FINAL CLAUSES

### ARTICLE 13

This Agreement shall enter into force on the date on which the two Governments exchange notifications of their acceptance of this Agreement.



In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at Hillsborough  
on the 15th day of November 1985

For the Government  
of Ireland

For the Government  
of the United Kingdom

Gearóid Mac Gearailt

Margaret Thatcher

APPENDIX G

THE U.S.-U.K. SUPPLEMENTARY EXTRADITION TREATY

EXTRADITION



United States No. 3 (1986)

## Exchange of Notes

between the Government of the  
United Kingdom of Great Britain and Northern Ireland  
and the

Government of the United States of America

amending the Supplementary Treaty of  
25 June 1985 concerning the Extradition  
Treaty signed at London  
on 8 June 1972

Washington, 19 and 20 August 1986

[The Supplementary Treaty is not in force]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
October 1986*

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**EXCHANGE OF NOTES  
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM  
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
AMENDING THE SUPPLEMENTARY TREATY OF 25 JUNE 1985  
CONCERNING THE EXTRADITION TREATY SIGNED AT LONDON  
ON 8 JUNE 1972**

No. 1

*The Secretary of State of the United States of America to the British Chargé  
d'Affaires ad interim at Washington*

*Department of State  
Washington  
August 19 1986*

Sir:

I have the honor to refer to the Supplementary Treaty signed at Washington on June 25, 1985<sup>1</sup> concerning the Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, signed at London on June 8, 1972<sup>2</sup>.

With a view to receiving the advice and consent of the Senate of the United States to ratification, the President transmitted the Supplementary Treaty to the Senate. On July 17, the Senate approved a resolution advising and consenting to the ratification of the treaty subject to the following amendments:

(1) Amend Article 1 to read as follows:

“ For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

- (a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;
- (b) murder, voluntary manslaughter, and assault causing grievous bodily harm;
- (c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;
- (d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and
- (e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense.”

(2) Amend Article 2 to read as follows:

“ Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the

---

<sup>1</sup> United States No. 2 (1985), Cmnd. 9565.

<sup>2</sup> Treaty Series No. 16 (1977), Cmnd. 6723.

requested Party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested Party, would justify committal for trial if the offense had been committed in the territory of the requested Party.

"In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

- (1) there is probable cause;
- (2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and
- (3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

"Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

- (1) the person arrested or summoned to appear is the person sought;
- (2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and
- (3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists."

(3) Insert after Article 2 the following new article:

#### "ARTICLE 3

- "(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- "(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision.

In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process."

(4) Renumber the remaining Articles 4, 5, 6, 7.

For your convenience, a fair copy of the text reflecting the amendments made to the articles of the Supplementary Treaty is enclosed. No changes were made to the testimonium clause or the Annex.

The President can not execute the instrument of ratification with respect to the Supplementary Treaty except subject to the amendments set forth in the Senate resolution. Accordingly, before further action is taken with a view to ratification on the part of the United States, it is necessary that my Government ascertain whether the amendments recited above are acceptable to your Government.

If the amendments are acceptable to your Government, steps will be taken promptly, upon the receipt by my Government of notification to that effect, to complete arrangements for the execution by the President of the instrument of ratification. Arrangements may then be made for the exchange of instruments of ratification at London.

Accept, Sir, the renewed assurances of my high consideration.

For the Secretary of State:

ABRAHAM D. SOFAER

ENCLOSURE

**SUPPLEMENTARY TREATY  
CONCERNING THE EXTRADITION TREATY BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND SIGNED AT LONDON ON 8 JUNE 1972**

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to make more effective the Extradition Treaty between the Contracting Parties, signed at London on 8 June 1972 (hereinafter referred to as "the Extradition Treaty");

Have resolved to conclude a Supplementary Treaty and have agreed as follows:

ARTICLE 1

For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

- (a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;
- (b) murder, voluntary manslaughter, and assault causing grievous bodily harm;
- (c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;
- (d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person; and
- (e) an attempt to commit any of the foregoing offenses or participation as an accomplice of a person who commits or attempts to commit such an offense.

ARTICLE 2

Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested Party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested Party, would justify committal for trial if the offense had been committed in the territory of the requested Party.

In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

- (1) there is probable cause;
- (2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and

(3) the act upon which the request for extradition is based would constitute an offense punishable under the laws of the United States.

Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

- (1) the person arrested or summoned to appear is the person sought;
- (2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and
- (3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists.

#### ARTICLE 3

(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for offenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process.

#### ARTICLE 4

Article VIII, paragraph (2) of the Extradition Treaty is amended to read as follows:

“(2) A person arrested upon such an application shall be set at liberty upon the expiration of sixty days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request for extradition is subsequently received.”

#### ARTICLE 5

This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE 6

This Supplementary Treaty shall form an integral part of the Extradition Treaty and shall apply:

- (a) in relation to the United Kingdom: to Great Britain and Northern Ireland, the Channel Islands, the Isle of Man and the territories for whose international relations the United Kingdom is responsible which are listed in the Annex to this Supplementary Treaty;
- (b) to the United States of America; and references to the territory of a Contracting Party shall be construed accordingly.

ARTICLE 7

This Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at London as soon as possible. It shall enter into force upon the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.



No. 2

*The British Chargé d'Affaires ad interim at Washington to the Secretary of  
State of the United States of America*

*British Embassy  
Washington*

*20 August 1986*

Your Excellency

1. I have the honour to refer to your Note dated 19 August 1986 relating to the Supplementary Treaty signed at Washington on 25 June 1985 concerning the Extradition Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8 June 1972.

2. I have the honour to confirm that the amendments to the Supplementary Treaty incorporated in the resolution approved by the Senate on 17 July are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland who will proceed towards ratification of the Supplementary Treaty as so amended.

3. I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

MICHAEL JENKINS

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