

Bell's  
Game Plan

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ANGLO-IRISH RELATIONS - GAME PLAN

The Problem

The autumn will be a difficult period in Anglo-Irish relations. For the Irish, the Extradition Act is likely to remain until December the only Anglo-Irish issue of political significance. For them, the October Conference may be the last opportunity to extract, if possible, concessions from HMG that will assist them in allowing the Extradition Act to come into effect on 1 December; while Irish failure to do so would be perceived in Northern Ireland (and Westminster) as a lack of commitment on the part of the Irish to deal with terrorism. The potential consequences extend to affect the whole future of the Agreement.

2. The auguries are not good: there appears, for example, to be a growing perception in Dublin (and amongst the SDLP) that HMG's commitment to the Agreement is only lukewarm; while, on our side, there remains dissatisfaction at the lack of tangible progress in improving cross border security cooperation. While from our point of view, there is no question of 'linkage' between Irish ratification of the ECST and other matters, it is a political reality that all the current issues in Anglo-Irish relations are more or less intimately related.

3. This paper accordingly considers against the background of our strategic objectives and wider considerations what new measures we might introduce (primarily in the administration of justice, but also elsewhere) to facilitate Irish accession to the ECST; and generally develop constructively the Anglo-Irish process.

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Our Strategic Aims

4. Despite the recent preoccupation with 'talks about talks', the objectives for which we signed the Anglo-Irish Agreement remain valid. They include:

- (a) the enhancement of cross border security;
- (b) the principle of consent in determining the status of Northern Ireland;
- (c) reassuring the minority that its interests will be given due weight;
- (d) securing Irish endorsement to our Northern Ireland policies abroad, and especially in the US.

5. Although progress towards structures of Government commanding cross community support would lessen the importance of some aspects of the Agreement, good relations with Dublin are essential if they are to be persuaded to accept changes in the operation of the Agreement which might entice Unionists, without simultaneously repelling nationalist opinion. Equally a breakdown in the current talks means that it would be all the more important to keep the Irish (and SDLP) 'on side', otherwise we would have no allies left in Ireland. In such circumstances, we might be prepared to contemplate measures of special interest to the Irish that would not otherwise find favour, or have not so far.

6. We share many of these aims with Dublin: above all, eliminating minority alienation; and eradicating terrorism, not least because of the disruptive effect that can have in the south also. We also share a common interest, for the present, in keeping Northern Ireland affairs off the front pages. The Irish Government remains preoccupied with economic problems; while for HMG, Irish problems are an irritant which risks

deflecting attention from their wider economic and social policies. This analysis suggests some corollaries: it remains true that the Anglo-Irish process is likely to be developed better as a 'non zero sum game' rather than by either party trying to 'score points' off the others. Second, while Governmental decisions in the north should only be taken 'on their merits', an important merit of some decisions will be that they help maintain the Anglo-Irish relationship.

### Our Short Term Objectives

7. There are, however, obstacles between us and our strategic goals, including:

- (a) the known views of the Irish Government on the ECST, and the fact that in current political circumstances they believe it essential to secure some concession from of HMG on the administration of justice as the price of ratification. Otherwise postponement or abandonment of this seems probable. So far from being impressed by our arguments that the ECST should be ratified 'on its merits', all present indicators suggest that the idea of 'linkage' between such ratification and progress in other areas (notably those listed in paragraph 7 of the Hillsborough Communique) is of increasing tripartisan importance in Dublin;
- (b) HMG is constrained by the need (so long as there is any hope of internal political development) not unnecessarily to irritate Unionist sensibilities; and
- (c) the Anglo-Irish relationship will remain prone to damage by unpredictable events: whether major security incidents; the decision of the Court of Appeal in the Birmingham Cases; or developments on Stalker/Sampson.

8. Against this background, we must consider:

- (a) what (non-counterproductive) help we could give the Irish Government to ease their problems in the Dail (and also, given their importance in the Dail, winning round both Fine Gael and the PDs);
- (b) how we can best put across our message about the ECST specifically, but also the need and reasons for not jeopardising the Anglo-Irish process as a whole; and
- (c) other means of reassuring both nationalists (and Dublin) that the Government is indeed sympathetic to their interests and identity.

9. There is no guarantee that any of the measures we can identify will achieve our short term objective of ratification (especially if we cannot make substantial reforms to the administration of justice). Nevertheless the Irish have so far avoided explicitly ruling out a favourable move on their part, in response to progress by us in some other area, or to a skilful public presentation by us of the multiple benefits which nationalists have derived from the Agreement to date. They have not so far encouraged us to believe that we could get away with this. But they have not said we could not either. The various ways in which we could widen the area of debate are discussed below.

#### The Next Meeting of the Conference - Current State of Play

10 Time is not on our side: the 1 December deadline is increasingly close; still closer is the next Conference meeting scheduled for 21 October, by which time (although we must not allow ourselves to be bullied into regarding the next IC meeting as an absolute deadline) we need to have clarified our

negotiating position, and, where necessary, have secured the agreement of the Secretary of State's colleagues. But against this background, it may be useful to assess the capacity of the current Conference agenda to satisfy the interests of both Governments:

- (a) Security Cooperation. We will remain the demandeurs, and with even less chance of making significant progress in the absence of movement on the administration of justice, and in a generally sour atmosphere which this topic could worsen;
- (b) The Irish Language. What we are currently offering the Irish falls short of their own proposals (and what the SDLP want);
- (c) Economic and Social. On the plus side, the Conference will want to welcome the Guide to Effective Practice etc; although the Irish reception so far has been a little disappointing and we are unlikely to be able to extend much more political capital from it. Also, the Conference may be able to bless a number of cross border projects. On the other hand we have not so far been able to identify any new major projects of this kind; and our reluctance to approach the EC for a donation to the International Fund, is a continuing irritant to the Irish;
- (d) Administration of Justice. On the plus side, we can point to a number of relatively minor improvements in the administration of justice, but, with the possible exception of the ending of 'supergrass' trials, (for which we cannot take easy credit), we are unable to demonstrate either 'early' or 'substantial' progress. In particular, we have not met the Irish Government in respect of what they consider perfectly reasonable ideas: three judge courts, and a second senior judicial appointment. The introduction of a reformed

jurors' oath, while desirable, does not constitute, on its own, 'substantial' progress. (The Lord Chancellor has still to agree.)

11. At the Conference (or earlier via the Secretariat) it would be possible to remind the Irish of a number of further specific benefits which have come about since the Agreement was signed: the long overdue repeal of the Flags and Emblems Act; electoral reform; the Public Order Order. (A comprehensive table setting out 'progress' under the Agreement is attached.)

12. On the other hand, unless further steps are taken (see below) we may still not be able to give a satisfactory answer on the RUC Code of Conduct; or RUC accompaniment of army (including UDR) patrols. While there will also be those in the SDLP and Dublin who may draw adverse inferences from:

- (a) our efforts to woo the Unionists (if still underway) at a price involving changes in the operation of the Agreement;
- (b) the Consultation Paper on declarations of non-violence;
- (c) a possible qualification of the Right to Silence; and
- (d) no progress on a Bill of Rights.

#### Can We Do Better?

13. On balance, it does not seem that we can provide the Irish through the Conference (and Secretariat) alone with the kind of evidence they could deploy in the Dail, given the current political climate in the Republic and the vulnerability of their minority Government, to justify a measure which will be widely misinterpreted as 'handing our boys over to the

vagaries, or worse, of British justice'. (Of course, a favourable Court of Appeal decision in the Birmingham case in November might just win the trick, but we cannot count on this). Therefore, we must reexamine what else we can do.

14. Ideally, the Irish want, and would probably be satisfied by, the introduction of three judge courts on their own; or a second senior judicial appointment, especially if held by a Catholic, in combination with some other 'makeweights'. There is a case, therefore, for reopening the former issue at Ministerial level. The Secretary of State argued the case, last year, for three judge courts on the objective merits of such a change, rather than of satisfying Irish susceptibilities. He was supported by the Foreign Secretary. On the other hand, the legal establishment, whether in Northern Ireland or London, is likely to remain strongly opposed; Unionist reaction to any such proposal, characterised as blatant interference by Dublin, is only too predictable; and it will be forcefully argued that it would be wrong in principle to 'bribe' the Irish to stand up and be counted in the fight against terrorism. In any case, it is most unlikely that a decision in principle to introduce courts could have been reached by the October Conference (or even by 1 December). It would not, in reality, be possible to go further than say that either the British Government were carrying out a further review; or announce some form of independent inquiry, perhaps by a senior judge or barrister, to examine this issue. (On the model of the 'Bennett Inquiry' or 'Sir George Baker"). However, the mere announcement of yet another inquiry seems most unlikely on its own to win us the trick in Dublin.

15. As to a second senior judicial appointment, the Secretariat report that there are some grounds for believing that the appointment of an existing High Court judge as President of the Crown Court might even commend itself to the Lord Chief Justice, especially if presented in terms of better management of the County Court judges in particular. (In Irish eyes, the

denomination of the appointee would have a fundamental bearing on their response). The idea is not intrinsically implausible: there is a strong case for relieving the burden on the Lord Chief Justice; and the measure, if combined with other measures, might win us the trick in Dublin.

16. Given the obvious pitfalls in either course, however, prudence suggests that the Secretary of State might be ill-advised to reopen the issues directly with colleagues. On the other hand, given the likelihood that our present line on the ECST may fail with wide reaching consequences, and that the Secretary of State would be held responsible for that failure, he might see advantage in seeking cover for his present policies. He might, therefore, usefully write to his colleagues explaining the line he is taking on the ECST; and the worries associated with it. Notwithstanding these, he would be pressing the Irish hard to ratify the Convention at the next meeting of the Conference. If, however, his best efforts (and those of his colleagues through other channels) met with failure, then the consequences could be so serious that urgent consideration should be given to promising an urgent reexamination for the case for a change in the Diplock Courts system by an independent tribunal, as well as looking urgently at the case for appointing one of the existing High Court judges as President of the Crown Court. And, at the same time, we should consider what progress we could make in other areas, some outside the direct responsibility of the NIO, on which the Irish have consistently expressed concern (and where insufficient progress has been made).

#### Other Measures

17. But even before raising these latter issues, the Secretary of State would clearly be well advised to seek early progress on :

- (a) the RUC Code of Conduct. There are some encouraging signs that such a Code could soon issue. But the Chief Constable should be left in no doubt as to the malign consequences of further delay, and that it was imperative that such a Code was in the right form, otherwise it could be counterproductive. In particular, it must make clear that the RUC must not only discharge their duties evenhandedly and with equal respect for the Unionist and nationalist identities and traditions, but be seen by both communities to be doing so (see the joint statement issued after the first Conference on 11 December); and
- (b) it is equally imperative that the Secretary of State should impress upon the Chief Constable the importance of army, and especially UDR patrols, being generally accompanied by, and seen to be accompanied by, RUC officers.

18. There are further areas, of lesser importance, where we should examine the possibilities of further progress;

- (c) identifying new worthwhile cross border projects which could be carried out under the aegis of the Conference. (This might bring no operational benefits. But in order to boost the significance of the Conference, and demonstrate our commitment to the Anglo-Irish process, this objection seems to weigh less than formerly; eradication of cross border smuggling and racketeering might be a suitable area);
- (d) The International Fund. The objections to seeking a contribution from the EC are well known. However, if the effect of an EC subvention was also to attract a fourth tranche of funds from the USA (thereby representing a net increase in the inflow of funds to

Northern Ireland) then there are grounds for reconsidering our position provides one did not simultaneously jeopardise the Government's wider negotiating position at the Copenhagen Summit.

### Selling our Strategy

19. In the absences of three judge courts, no combination of the above measures can guarantee the ratification of the ECST. It will therefore be important to ensure that our case is put across as effectively as possible through all the channels at our disposal. It is, therefore, essential that our arguments in favour of ratifying the ECST on its merits, supported by whatever means are to hand for demonstrating the successes of the Anglo-Irish process, and such new measures as the Government may determine, in Irish terms, is rehearsed through:

- (a) the Conference/Secretariat route;
- (b) the Embassy, who should continue to lobby vigorously opinion formers generally in Dublin, and Fine Gael and PD TDs in particular given their importance in determining the fate of the Extradition Act;
- (c) forthcoming EC meetings. The EC Foreign Affairs Committee meets on 3/4 October; the European Council on 19/20 October. In both, the Foreign and Commonwealth Secretary will be able to remind Mr Lenihan of the importance we attach to the ECST, and to maintaining the Anglo-Irish relationship.
- (d) the Secretary of State. To ease the passage of the Extradition Bill in the Dail last year, the Secretary of State made a 'speech' outlining the reforms that

had been made in the administration of justice. The Secretary of State could, therefore, make a major speech which, while drawing attention to measures taken to enhance public confidence in the administration of justice, would nevertheless emphasise for a predominantly nationalist/Dublin audience the benefits that had accrued to them since the signing of the Agreement. The message might be echoed by others of his colleagues with major interests in Northern Ireland: the Foreign and Commonwealth Secretary, but also Mr Hurd, as a former Secretary of State, with a special interest in administration of justice questions. The Prime Minister has not hesitated to give her personal endorsement to our fair employment policies and the Agreement represents one of her major policy achievements. She may, therefore, be willing to speak out on a suitable occasion in favour of the Agreement and the Anglo-Irish process.

#### Damage Limitation

20. If all our efforts fail, we will be forced into a 'damage limitation' exercise. It would be tragic if the Anglo-Irish process fatally stumbled over a piece of paper of more symbolic than operational significance. Hence, we may need to ensure that:

- (a) if the Extradition Act founders, it founders in the least damaging way. On balance, a less damaging impression will be given if the Irish defer, rather than definitively kill the prospect of ratification; and
- (b) we emphasise the progress, made already in extradition

matters (and if possible shame the Irish into making more rapid progress on outstanding issues); and

- (c) public opinion in NI and GB is aware of the limited operational importance of the ECST.

21. (a) above would require exceptionally sensitive handling with the Irish and, like (c) it seems undesirable to take steps in this direction until we were virtually certain that the Convention was lost. Otherwise, the Irish may come to believe that we do not attach the importance to it that we do. This would be counterproductive. But we can continue to press the Irish hard, via WG2, on extradition matters.

22. The Agreement comes up for review in one year's time. It might be possible for us to begin that review now, whether or not there was internal political progress in the north, to discuss the totality of the Anglo-Irish relationship, in so far as it affected Northern Ireland, with a view to modifying the operation of the Agreement. Such a review could, in principle, widen, endorse, or reduce the scope of the Intergovernmental Conference. Much would depend on our judgement of the likelihood of internal political progress, as well as defining more precisely what we hoped to achieve from such a Conference before it could be broached with the Irish. But, faced with the present difficult situation the idea seems to merit further exploration.

### Conclusion

23. The Irish are threatening to delay ratification of the ECST by putting off the implementation of their Extradition Act beyond 1 December. This could damage the whole future of the Agreement. Since this would run counter to our interests, we need:

- (a) if possible, to produce some new proposal, preferably in the legal field or in some other area of the Agreement's agenda, which the Irish can use to justify going ahead with implementation on 1 December. There is a case, given the importance the Irish currently attach to three judge courts, for the Secretary of State's writing to colleagues explaining his current approach to the ECST; explaining his worries; and preparing the way, if the Irish are not prepared to ratify the Convention on its merits, for an independent review of the case for a change in the Diplock courts system, and the merits of appointing an existing High Court judge as President of the NI Crown Court. Rapid and satisfactory progress also needs to be made in respect of the RUC Code of Conduct, and the RUC accompaniment of patrols. New measures in other measures also merit examination;
- (b) in addition to any new measures resulting from (a) above, HMG must try and persuade the Irish, through all available channels, that progress under the Agreement so far is sufficient justification for their going ahead, given the objective arguments for ratifying the ECST, and the political damage to the interests of both countries which would be caused by failure to do so; and
- (c) in case (a) and (b) above do not bring success, it is desirable to begin planning ways of minimising the damage to the Agreement and to Anglo-Irish relations consequent upon non ratification.

24. It will also be necessary to ensure that the case for ratifying the ECST on its merits, supported by the most favourable presentation of what we have done and will be doing,

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within the ambit of the Conference, to benefit nationalist and Irish interests, should be made as effectively as possible by all the resources at our disposal: the Secretariat, the Dublin Embassy; the exploitation of encounters between the Foreign Secretary and his Irish opposite number. In addition, the Secretary of State, possibly supported by Ministerial colleagues, including the Prime Minister, might take a suitable opportunity to reaffirm our commitment to the Agreement and also to reinforce all the points noted above.

25. There is no guarantee that we shall succeed, especially so far as the ECST itself is concerned. It would therefore also be desirable to start planning a 'damage limitation exercise' if the ECST is not ratified shortly after 1 December lest such a failure poison Anglo-Irish relations generally.

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