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SIL DIVISION  
20 MAY 1994

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	Mr Watkins	- B
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	Mr Marsh	- B
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	Mrs Collins	- B
	Mr Brooker	- B
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#### POLICING STRUCTURES UNDER A POLITICAL SETTLEMENT IN NORTHERN IRELAND

When the last round of Talks came to an end in late 1992, HMG's views on the future of security policy, and policing structures in particular, under a political settlement were less than fully-formed. The paper attached to this submission attempts to rectify this, at least in the field of policing. The Secretary of State is invited to note and approve the proposals advanced in the paper and summarised in this submission.

#### Background

2. The main reason why HMG's policy on policing structures in the event of a political settlement was not developed during the last Talks is that the lines of accountability and responsibility between the RUC, NIO and PANI were then still under active consideration. Until the conclusions embodied in the document

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'Policing in the Community' were reached, it was impossible to plan ahead. One could not foresee the shape of policing structures under the changed circumstances of a political settlement unless it was clear what the current policy should be.

3. Now that 'Policing in the Community' has been published, and early work is in hand on legislation for - perhaps - the next Parliamentary Session to implement it, it is possible to look further ahead. At the same time, one can judge more clearly what impact these proposals will have on wider policy issues, such as devolution of responsibility for security to a Stormont Assembly.

The Paper

4. The attached paper analyses the position of the various parties and Governments on policing and security policy. It then makes and discusses a number of suggestions and proposals and evaluates these in the light of existing policy. The paper is designed as an internal position paper, part of which can be detached and tabled by HMG in future Talks, if Ministers agree.

5. The proposals are made on the assumption that a political settlement has been reached, but - crucially - that peace has yet to be achieved. In such circumstances, it is quite likely that there would be more, rather than less, violence on the streets of Northern Ireland. It would therefore be essential that the RUC's ability to provide an adequate and effective service should be allowed to continue unhindered. In this climate, it is probable that the radical reform of policing judged by many to be a fundamental requirement in order to win the support and trust of the Nationalist community simply could not be delivered. To do so would jeopardise the RUC's ability to do its job, assisted where necessary by the Armed Forces, of maintaining law and order.

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6. The paper examines the position of the parties and the Irish Government in this light. It does not assume that no change can be made. Where reform is possible which satisfies the twin criteria of:

- (a) enhancing the extent to which the whole community in Northern Ireland can feel that the RUC is part of that community, accountable to it and working on its behalf; and
- (b) preserving the RUC's operational independence and efficiency,

that reform is proposed. The mere fact of a political rapprochement ought to foster an atmosphere of flexibility towards institutions such as the RUC which would make such proposals tolerable to both sides of the policing debate. The paper seeks to build upon the practical aspects of what has already been proposed. It draws on the workable features of the Mallon agenda for example, such as local accountability for community policing and cross-border counter-terrorist structures, while rejecting the unworkable.

7. The proposed reforms are directed at policing structures, rather than the RUC per se. The paper does not accept criticism that the RUC performs its duties unfairly or partially.

Proposals

8. The proposals are fairly prescriptive and detailed. It is necessary to have a fairly good idea of what we would like policing structures to be under a political settlement. There is a need to ensure that the legislation which may be introduced in Westminster in less than a year's time is broadly compatible with

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the plans set out here. This would also have the benefit of reducing the extent of further legislation necessary to bring them into force in the event of a political settlement.

9. Specifically the paper proposes the democratization of the PANI successor body by giving to elected members of a Northern Ireland Assembly the power to determine its membership. It also foresees an enhanced role for Community Police Liaison Committees. An Assembly Committee on Security Matters should be established, restricted in its powers to those of a Westminster Select Committee. Devolution of security policy from London should take place, if at all, in a cautious, piecemeal fashion. Some relatively modest reforms of both the RUC and the police complaints system are suggested. The proposals are set out in detail in paragraph 31 of the attached paper.

(i) PANI Successor Body

This body, christened the Police Commission for Northern Ireland (or PCNI) for the purposes of the paper, would be disbanded as part of the political settlement. Its members, at that point anonymous, would be removed and the PCNI would be reconstituted from the ranks of the newly-created Assembly and - perhaps - a number of their nominees. This would create a level of democratic legitimacy and public identifiability which PANI have not enjoyed and which their immediate successors will not share. The PCNI's composition would be weighted according to the composition, party by party, of the new Assembly. Their functions would stay unaltered but might be complemented by a right to comment on the composition of the RUC and an advisory role in recruitment.

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(ii) Community Police Liaison Committees

These would be given an enhanced role, complementary to the reconstituted PCNI, to ensure that the proposals of the local community, and its reactions to policing, were relayed to the senior echelons of the RUC via the PCNI. The CPLCs could be statutorily required to pass on specific complaints and other comments to the PCNI. This should incidentally serve to enhance the standing of the PCNI, especially in the eyes of the minority community. The CPLCs could also be given a role in the resolution of informal complaints against the police.

(iii) Assembly Select Committee on Security

It has already been proposed (in the draft White Paper) that, if it were possible to set up an Assembly, a level of input into and influence over security policy could be conceded to that body or an institution set up under its auspices. This should not however include responsibility for the formulation of security policy which should rest with London. Two of the many reasons for this are:

- (a) the continued presence of the Armed Forces in Northern Ireland, who are ultimately controlled by MOD; and
- (b) HMG's responsibilities under international legal obligations, especially the European Convention for Human Rights, for security policy in Northern Ireland.

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(iv) Independent Commission for Police Complaints

A political settlement would also provide an opportunity to enhance the powers of this body in order to foster the support and trust of the minority community in the police complaints system. A crucial step would be to take the responsibility for investigation of complaints against the police out of the hands of the RUC. The Chief Constable himself has indicated that he would not be opposed to this. The ICPC might be enabled, in appropriate cases, to call upon police officers from Great Britain to investigate certain complaints. Such officers would be able to exercise their Mainland powers as constables, as they cannot currently do in Northern Ireland.

(v) The RUC

Consideration could be given to the formation of a cross-border counter-terrorist secretariat with the Garda. This could routinely discuss operational matters of mutual benefit. It might also be appropriate to look again at the issues of the name, symbols and uniforms of the RUC.

10. As pointed out in paragraph 33 of the paper, it transpires that these proposals - entirely coincidentally - have something of a pedigree. Like many apparently new ideas about Northern Ireland, they have been thought of already. The model proposed bears marked similarity to the arrangements mooted in the 1973 White Paper 'Northern Ireland Constitutional Proposals'. Those were, however, never put to the test.

11. It is suggested that the proposals set out above and developed in the attached paper are a logical progression from existing policing and security policy. While they do not in any

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sense seek to square the circle of opposing political views about the ideal policing structure, they do seek to draw from the workable elements of existing policy plans.

12. The Secretary of State is accordingly invited:

- (i) to note the proposals set out in this submission;
- (ii) to approve the attached paper as an internal position paper for use in future Talks; and
- (iii) to approve paragraphs 22 to 38 (except where square bracketed) of the paper as the basis for an HMG policy paper which might be tabled in future Talks or perhaps inserted as an Annex on policing structures in a White Paper.

(signed)

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**INTERNAL POSITION PAPER ON POLICING STRUCTURES UNDER A POLITICAL SETTLEMENT IN NORTHERN IRELAND**

Purpose of Paper

The aim of this paper is (i) to analyse the positions of the interested parties (constitutional political parties in Northern Ireland and the two Governments) on the question of policing structures in Northern Ireland, (ii) to advance a number of suggestions and proposals for such structures; and (iii) to discuss these suggestions and proposals, particularly in the light of the foregoing analysis.

Summary

2. The proposals which are made seek to reflect the changed circumstances which would attend a political settlement in Northern Ireland - albeit before the arrival of 'peace'. In such a situation a level of cross-party political agreement would have been reached which could create a climate of flexibility of attitude towards the established institutions of Northern Ireland. Perhaps foremost among these is the Royal Ulster Constabulary. Reform of the RUC is something that most nationalists would expect to accompany a genuine political settlement. The more radical that reform, they would say, the better. But this approach has to be reconciled with the continued need for an adequate and efficient police service in Northern Ireland. It is quite likely that this need would be at its most acute in the volatile atmosphere which would then prevail - the examples of 1974 and 1985 are pertinent. It may be that the demands of the Mallon agenda, for example, simply cannot and should not be satisfied by Government action. Indeed, the Secretary of State has already decided this. The premise of this paper is that there are elements of what Mr Mallon has proposed : local accountability for community policing, cross-border counter-terrorist co-operation and a recognition of the



distinction between counter-terrorist and community policing, which are desirable in themselves and which fit comfortably with the principles that underpin the 'Policing in the Community' initiative.

3. What is proposed is democratization of the PANI successor body by drawing its membership largely or exclusively from the elected ranks of a Northern Ireland Assembly. There would be an enhanced role for Community Police Liaison Committees. There would also be a measure of reform specifically affecting the RUC: the powers of the Independent Commission for Police Complaints would be enhanced, and there might be some alteration of the emblems and uniforms of the RUC - including its name. Its recruitment policies could receive extra scrutiny.

4. These proposals would also have an impact on wider issues of security policy, and the paper considers these. It is suggested that there could be an Assembly Committee on security policy, but with only Select Committee powers. It would have no executive function. It might be possible to institute a separate Assembly Committee on (non-security related) Home Affairs with executive powers.

5. Part I of the paper (paragraphs 9 to 21) provides an analysis of the Mallon agenda, the Unionist position, the likely stance of the Irish Government, HMG's existing Talks-related proposals on security policy and the consultative paper 'Policing in the Community'. The Home Secretary's current policing structure reforms are also addressed.

6. Part II of the paper (paragraphs 22 to 31) sets out in detail the proposals discussed in paragraphs 3 and 4 above. This part could form the first half of an official HMG paper to be tabled in Talks. Alternatively, it could form the basis of a contribution to a White Paper.

7. Part III of the paper (paragraphs 32 to 42) evaluates the proposals in Part II in the light of a number of pre-existing security policy issues such as devolution, local accountability and cross-border structures. The proposals are also assessed in the context of HMG's current views as set out in the draft White Paper and Policing in the Community. Paragraphs 32 to 38 could form the second half of a paper to be tabled in the Talks. Square brackets in the text here and in Part II indicate exceptions to this.

8. The proposals, as a whole, seek to do as little violence as possible to existing policing and security policy. The paper is prescriptive and detailed because we need a good idea of what policing structures will look like. There is a need to ensure that policing structures legislation - due to be introduced at Westminster in under a year - is reasonably compatible with the medium-term plans advanced here. This would reduce - as far as is practicable - the amount of further legislation needed in the event of a political settlement in order to bring these plans into operation.



PART I : ANALYSIS

The Mallon Agenda

9. This can be succinctly described. Mr Mallon proposes splitting the RUC into a series of community police forces in Northern Ireland, each with its own Police Authority, and a counter-terrorist force which would become part of an all-Ireland counter-terrorist force under the authority of an all-Ireland Police Authority.

10. The Secretary of State has made it quite clear "that he would lose all credibility with Unionists if he were to do other than reject the Mallon thesis" (paragraph 2, minute from PS/SofS to Mr Cooke of 13 April 1993). The Secretary of State proceeded to set out a number of policy considerations against seeking to split up the RUC. First among these was the massive loss of confidence which would be engendered in the RUC, and indeed the Armed Forces who are present in Northern Ireland to act in their support, by such a suggestion. One can add that it might also lead to the disillusionment of a sizeable minority of the nationalist population, who actually (albeit usually silently) support the work of the RUC - grudgingly or otherwise. It could create a rather unreliable "community constabulary"; the borderline between community and counter-terrorist policing would be hard to draw; and it might make counter-terrorist police more remote from the population they are supposed to protect. One could go on.

11. There are however, three interesting features of the Mallon agenda which are noteworthy. They form the salient element of what he proposes, and yet may also form the foundation of a structure which HMG could endorse. These are:



- (i) recognition of the distinction between community and counter-terrorist roles of the RUC. Indeed this distinction, although somewhat blurred in practice, is essential to what is proposed in "Policing in the Community", under which PANI's successor body is to suggest objectives for community policing by the RUC, and is to monitor the RUC's performance of those objectives, after they have been prioritised by the Secretary of State.
- (ii) The community police force would be accountable to local, representative, possibly elected, authorities.
- (iii) Co-operation between the UK and the Republic of Ireland is necessary to produce effective counter-terrorism, North and South of the Border.

#### Unionist Position

12. The Unionists responded fiercely to the proposals contained in the Mallon agenda. The DUP response was particularly vituperative. For the UUP, Reg Empey said that "Mr Mallon displays an astonishing ignorance of how the police service works ... what Mr Mallon is suggesting would lead to one police force which could be shot at with impunity and another which would be taken over by the paramilitaries". Generally the Unionist response can be summed up in the words of Ken Maginnis MP : don't "mess with the RUC if you don't want serious trouble from the Unionist community".

13. A similarly hands-off approach is not to be found in the Unionist position on a Northern Ireland Police Authority. In the Commons Second Reading debate on the Police and Magistrates' Court Bill on 26 April 1994, David Trimble MP argued that the police and

the police authority in Northern Ireland "would like to have a police authority that is representative of local government rather than one which is appointed" (col.163). Mr Trimble urged that locally elected politicians should have a role on the new police body. Funding by Central Government should be routed through locally elected politicians. This is also likely to be the Unionist approach towards security policy generally. The more say that locally elected politicians can have in the formulation of security policy, the happier they will be. Hence the trade-off in chapter 13 of the White Paper, in which a level of influence is conceded but the question of devolution of responsibility is put onto the back-burner, to be considered on a case-by-case basis. This is discussed in paragraph 16 below.

#### Irish Government

14. The Irish Government have so far been evasive and ambivalent about the Mallon agenda, in so far as they have ever addressed it. But the Irish have regularly argued that significant change of some sort needs to be made to policing in Northern Ireland. Paragraph 14 of the recent draft framework document makes this clear. They seek a commitment, in the context of Strand 2, that both Governments will "consider ways in which new North-South institutions and the growth of political agreements may offer new possibilities and opportunities for enhancing community identification with policing in Northern Ireland." They have yet to discuss this with us, or to explain what, if anything, concrete lies behind these words.

15. But it is taken for granted in Dublin that major reform of the RUC will need to be a prominent feature of any political settlement. Such reform may, however, fall rather short of the Mallon agenda. But, from a Southern perspective, the creation of a number of regional constabularies in Northern Ireland (perhaps with a single Special Branch and centralised overall organisation



and command arrangements) would not be impractical, or inherently implausible for other reasons. How, ask Irish politicians and journalists, could working-class nationalists be convinced that life at street level would really be transformed, if the RUC stayed the same? Without visible change to the RUC, HMG would be perceived in the Republic as bowing out of Northern Ireland simply in order to allow Unionists to disinter the old Stormont.

#### UK Policy

16. The Secretary of State's response to the Mallon agenda was dismissive, as explained above. It did not, however, necessarily decide the vexed question of the devolution of responsibility for security policy to Stormont in the event of a political settlement. "Responsibility" in this context means responsibility for the formulation of security policy, rather than the opportunity to advise or influence that formulation. This is an important distinction, and one which is pointed up in the existing lines to take on devolution and security:

- "- The Government believes that new political institutions that may emerge in Northern Ireland as a result of the Talks should have an input into and influence over the formulation of security policy.
- However, it is too early to determine the extent to which these new institutions should have responsibility for security policing, in the sense of being able to take decisions."

[This did not refer to the taking of operational decisions, as opposed to decisions about policy.]



17. Chapter 13 of the White Paper, at paragraph 4, sets out the numerous practical constraints on devolved institutions picking up responsibility for security policy other than on an incremental, case-by-case basis:

- "- the need for the Armed Forces to remain answerable to Westminster;
- the need to safeguard the operational independence of the Chief Constable;
- the requirements of the UK's international obligations;
- the need to maintain optimum effectiveness of co-ordination of counter-terrorist arrangements for the UK as a whole;
- the difficulty which new political institutions in Northern Ireland would face while they were establishing themselves in achieving sufficient consensus on controversial security issues to enable the necessary urgent decisions to be taken without delay."

18. These considerations on the future of security policy in Northern Ireland cannot be divorced from the settled conclusions which have been reached in the field of policing. These are listed below:

- (i) RUC : operational independence is retained (but is not to be interpreted as silent isolation). The police should gain full delegation for the management of all services necessary for the policing function;

- (ii) NIO : retain responsibility for security policy and for resourcing; but acknowledge a direct relationship with the RUC on resourcing decisions;
- (iii) PANI : to hold the RUC accountable for the quality of the services it provides to the community and for policing priorities. A role in police appointments and a fuller role in complaints are consistent with those objectives; resourcing and servicing responsibilities are not. Without these latter responsibilities, the Authority would be free to have a more public role in identifying the community's interest in policing.

19. The effect of this is that while the RUC should retain operational independence, it is to be accountable, broadly speaking, to the Secretary of State for its delivery of security policy and to the PANI successor body for community policing - which means in practice all policing save counter-terrorism. While the Secretary of State for Northern Ireland will set overall policing objectives, as the Home Secretary sets national objectives in England and Wales, the focus is firmly on security policy. Other matters are to be left to the Police Authority. This body of course is not elected, but selected by the Secretary of State. Because of the sensitivity of its past role as being responsible for the maintenance of an adequate and efficient police force in Northern Ireland (this was the thrust of the 1969 Hunt Report and the 1970 Act), PANI members are anonymous to the Northern Ireland population.

20. The NIO proposals are designed to be easily adaptable in the light of future political development of the sort envisaged in this paper. Most executive powers are to be held by the Secretary

of State, while operational and financial responsibilities rest with the Chief Constable. This allows much greater scope for altering the composition and placing of the PANI successor body.

England and Wales

21. Briefly stated, the Home Office reforms of 1994 will produce local police authorities which set local police objectives. They will be made up in part of local councillors, and in part of appointed local worthies. The Home Secretary will set national policing objectives, which the local objectives may or may not reflect or repeat. The local police authorities meet in public and their membership is public. They fund 49% of the local Constabulary's requirements, to the Home Office's 51%. This is a significant distinction from PANI, which has had no revenue raising responsibilities. Police authorities will retain the responsibility to provide resources to their local police.



PART II : SUGGESTIONS AND PROPOSALS

The Future of HMG's Policy on Policing and Security

22. This can be considered in the context of the three different situations: the current position (in which there is no peace and no political progress - as these terms shall be defined - in Northern Ireland), peace in Northern Ireland, and political progress but no peace.

(i) No Peace and No Political Progress

23. For as long as there is no peace and no political progress in Northern Ireland, HMG's gradualist approach to policing and security policy is likely to continue. Policing in the Community is in part intended to be a step towards improving community links with the police by giving the PANI successor body a more clearly defined role in the field of community policing. (In this paper the PANI successor body is referred to as the PCNI - or Police Commission for Northern Ireland - purely for the sake of convenience). But this approach can be no more than slow, deliberate and incremental because of the lack of any form of democratic influence and control over the RUC at the Northern Ireland level. There are no democratic institutions which can satisfactorily fill this void, and no financial responsibility to enable priorities to be set by local politicians. Good governance is the order of the day.

(ii) Peace

24. The picture changes completely if peace breaks out. For these purposes, peace can be defined as the removal of the support of the Armed Forces to the Civil Power and the termination of emergency legislation. While the Army remains in Northern

Ireland, Westminster retains a crucial responsibility for security policy. This is inevitable because of the Ministry of Defence's responsibility for force levels worldwide, including in Northern Ireland. And while emergency legislation exists, Westminster needs ultimate control over it because of the UK's international human rights obligations. One might add that the incorporation of the European Convention of Human Rights into domestic Northern Irish law would not alter this position. But if peace comes to pass, HMG has always accepted that the emergency justifying emergency legislation (although see paragraph 27 below) will no longer exist, and all things will become possible.

25. In this event, because there will be no security problem there will be no need for a security policy. But executive responsibility for policing, principally the setting and funding of police objectives, could be transferred to the democratically elected local institutions which will probably already be in place by this stage. A united Ireland or an independent Ulster would not be a prerequisite for peace breaking out. There would simply be a Northern Ireland in which all communities accepted the principles underlying the Joint Declaration to the extent that there was no longer the need for an Army presence or emergency legislation.

26. One obvious consequence of peace would be not only the removal of the Armed Forces presence but a significant reduction in the number of RUC officers. In the first 47 years of its existence, the RUC's strength never rose more than a shade above 3,000; and civilian support never exceeded 600. During this protracted period, there was very little serious crime in Northern Ireland and the clear-up rate led the UK, usually exceeding 50%. It is not suggested that when peace returns the RUC can rapidly shrink back to 3,000 - the increase in drug-related offences, auto crime and the like mean those days are probably gone for ever - but around 4,500 may be a reasonable number to police an area the



size of Northern Ireland in normal conditions. The RUC Reserve aside, this would mean cutting the strength of the regular service by half. In these circumstances recruitment, which it is conventional to look to as the means of increasing the number of Catholics in the RUC, would be at a virtual standstill for many years. So the service would remain overwhelmingly Protestant. This points to the need for fresh consideration to be given to recruitment issues in the years leading up to peace. In any event, the RUC could face severely depleted morale as a result of reductions in promotion opportunities and overtime. Any 'peace dividend' created by decreased security force costs would have to address this problem.

27. It may of course be necessary to retain elements of the emergency legislation on the statute book for a period on a contingency basis after peace breaks out. This would continue to be treated as an excepted matter.

(iii) No Peace, but Political Progress

28. Political progress for these purposes can be defined as agreement between the British and Irish Governments and constitutional political parties in Northern Ireland sufficient to support the establishment of a Northern Ireland Assembly. The security situation would remain - it might even have been exacerbated by this development. The constitutional political parties would be able to agree, or abide by, policies determined by Assembly Committees for the governance of Northern Ireland. The six departments would be 'run' by corresponding Committees. There would be a broadening of the capacity for cross-community agreement. Although it is likely that most constitutional political parties might be represented in the Assembly, the legitimacy of that institution would not depend on the consent of any particular party to its establishment.



29. In this situation, the opportunity for greater democratic involvement in the formulation, management and monitoring of security policy would become possible. The democratic institutions which could then be created would be capable of lending greater legitimacy to the security forces, including the police, especially in the eyes of the minority community. These possibilities are considered in the remainder of the paper.

A Government Strategy for the Future of Security Policy and Policing Structures in the Context of an Overall Political Settlement.

30. In the light of the analysis set out above, it is possible to construct a strategy to cover future security policy and policing structures in the event of an overall political settlement. The strategy recognises that the more complex the policing structures and monitoring arrangements, the more expensive it will be to service them. And it is essential that the command and control arrangements for both the RUC and the Army can work effectively together. The cardinal rule of the strategy is not to compromise the operational efficiency of the security forces. As explained above, it is presumed that peace has not broken out.

31. What follows is a possible version of the new arrangements, which can be used as a basis for negotiation in the Talks Process.

PCNI: The PCNI would be disbanded. The anonymous members of this body would be removed, and it would be reconstituted from (or largely from) the ranks of the newly created Assembly. This would create a level of democratic legitimacy and public identifiability which PANI have not enjoyed and which their immediate successors will not share. The composition of the new PCNI (the name would stay the same,

as - broadly - would the functions) would be weighted according to the composition, party by party, of the Assembly. It is for consideration whether the new PCNI would be made up exclusively of Assembly members. Consideration should be given to ensuring a fair geographical as well as political spread among members. There could also be professional and trade union representatives, etc, as there are now. If so, it would be important that such individuals were appointed by the Assembly, rather than the Secretary of State, so as to invest the composition of the PCNI with as much democratic legitimacy as possible. This would of course mark a departure from policy in England and Wales, which contemplates a proportion of Central Government appointees. As indicated, the role of the PCNI would remain unchanged from what is proposed under 'Policing in the Community' and what will be contained in the new legislation. Only the Secretary of State will be able to allocate priorities to policing objectives in both the security and community policing fields because only he will hold the budget. But the PCNI would be able to argue all the more forcefully for community policing priorities with the weight of democratic legitimacy behind them. It might be possible to tinker with their functions to give them the added right to comment on the composition of the RUC (cf the Anglo-Irish Agreement) and an advisory role in recruitment (see paragraph 26 above). On the other hand, some would have doubts about an elective PCNI retaining powers of senior appointment. But removal of this function would be seen as a serious dilution of PCNI powers. They already have an advisory role on the banning of marches - the Secretary of State must first consult PANI wherever practicable under article 5(2) of the Public Order



(Northern Ireland) Order 1987. This could be extended to other areas, such as the routing of marches. The Secretary of State would retain his ultimate veto in these areas of policy nevertheless.

Community Police Liaison Committees (CPLCs):

These would be given an enhanced role, complementary to the reconstituted PCNI, to ensure that the local community's proposals and reactions to policing are relayed to the upper reaches of the RUC via PCNI. The CPLCs could be given a formal, possibly even statutory, duty to maintain links with the community, perhaps convening periodic 'surgeries' or public meetings. This would enable them to pass on community complaints or other comments to the PCNI. This should also significantly enhance the standing of the PCNI, especially in the eyes of the minority community. None of this should disrupt any existing good relations which might subsist between the local divisional or sub-divisional police commander and, say, the local parish priest. The CPLCs could also have a role in the resolution of informal complaints against the police. The scope for this means of disposing of minor allegations might be significantly enhanced if the CPLC, as a disinterested third party, were able to endorse the fact that sufficient and appropriate informal police action (whether an apology, a posting or an informal investigation establishing that correct procedures had after all been followed) had indeed been taken in response to a complaint.

RUC : None of what is proposed should disturb the basis on which the RUC discharges its duties. There would be no split between community and counter-terrorist policing. The setting up of a cross-border counter-terrorist policing secretariat could however be created. If it becomes

possible to institute localised Garda counter-terrorist structures in Border areas, such a secretariat (made up of mid-ranking Garda and RUC officers) might be convened to explore issues such as extra-territorial interviewing, hot pursuit and other issues. Its interests would be purely operational. It would at first be answerable to the Governments alone. [It is for consideration whether it would be appropriate to broach issues such as this in the context of Strand 2 talks.] The RUC could also be affected by the removal of its complaints investigatory function and by a re-think on its name, emblems and uniform. These are discussed below.

Assembly Select Committee on Security:

It has already been proposed that, in the event that it was possible to set up an Assembly, a level of input into and influence over security policy could be conceded to that body, or an institution set up under it. The distinction between responsibility and influence is crucial here. For reasons that have been discussed already, ultimate executive responsibility for security policy must remain with the Secretary of State until peace (as defined here) breaks out. Even if it were possible to devolve responsibility for security policy in advance of that, it would be inappropriate and unwieldy to transfer it to a body which had an otherwise exclusively influential and advisory role. It follows that any Assembly Committee set up to take an interest in security affairs would be on the Select Committee model, rather than the Executive Committee model devised for management of the six departments. There would be some inevitable overlap with the job of the Select Committee on Northern Ireland at Westminster which, quite properly, can also explore security policy. The Stormont body might nevertheless be able to call for senior police



officers to give evidence before it, and to discuss elements of security policy with Ministers and officials from the NIO responsible for security. [Care would obviously have to be taken to ensure the Committee did not overstep the mark in examining police officers by seeking to enquire into operational matters.]

Home Affairs Committee:

It is for consideration whether this structure would leave room for an executive Assembly Committee responsible for Home Affairs which did not fall within the security umbrella - such as elections, gambling and probation. There are of course security-related aspects to all of these. The scope for a Committee of this sort might be more clearly discernible a little further on. Strictly, it is outside the ambit of the paper because ex hypothesi it would not have a responsibility for security policy, whether executive or advisory. It might in due course assume responsibilities for areas which had been but were no longer considered to be matters of public order or security policy - as discussed in paragraph 32 below. An alternative scenario would be an Assembly Select Committee on Security and Home Affairs. But this would entail depriving the Assembly of an executive function in respect of some non-security related matters.

ICPC: Police complaints is another area in which there is a need for greater faith and trust from the minority community. The complaints mechanism, it is said by some, is ineffective because those for whom it exists - the potential complainants - do not believe it is worth using. Complaints are not seriously followed up, because the job of investigation - as opposed to supervision of such investigations - is given to the RUC itself. It would be

possible to counter this criticism if the role of complaints investigation could be taken out of the hands of the RUC. The Chief Constable has indicated that he would not be opposed to this, and Opsahl confirms that several senior police officers to whom he spoke endorse the suggestion. The ICPC would be able to call on police officers from Great Britain to use their Mainland powers to investigate any complaints which it considered appropriate. These would obviously be the more serious matters such as police corruption, systems breakdown (eg a riot breaking out at a funeral march) or the use of lethal or near-lethal force. Alternatively, the ICPC's remit could be broadened by enabling it to take on an investigatory function itself - either by appointing its own investigatory officers or, perhaps less plausibly, by taking responsibility for the RUC's Complaints and Discipline department. The benefit of each of these solutions would be in the removal of the complaints investigatory function from the RUC. This is a step which could apparently be taken without much difficulty, and indeed without the need for an overall political settlement. But it might be easier to introduce in the context of a general re-think about how Northern Ireland is governed. This is also true of the matters discussed in paragraph 38 below. More problematical is conceding to the ICPC the right to call in investigators to deal with incidents about which there had not been any complaints. But under a more demonstrably independent investigation system, genuine complaints might be more likely to be made about such incidents.



CONFIDENTIAL

The Secretary of State:

Pending peace, he would continue to retain executive responsibility for security and setting of policing objectives. On occasion he might be able to concede a greater role to the PCNI, but he would retain the ultimate veto over all executive decisions about policy. [Such responsibility would of course become rather more difficult to discharge as a result of the elective nature of the PCNI.]

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PART III : DISCUSSIONDevolution of Security Policy

32. It is questionable whether it is sensible to transfer responsibility for - ie formulation of - security policy to a devolved institution in advance of peace breaking out. Once peace has broken out, as evidenced by the removal of the need for a significant Armed Forces presence in Northern Ireland, the need for a security policy will no longer exist anyway. What is being suggested is a structure that will broadly remain unchanged before peace comes to Northern Ireland. Such limited incremental devolution of responsibility for security matters (eg on routing marches) as may be permitted to occur should assist a managed development towards a normal policing environment. [It is noticeable that Mr Mallon is not asking for devolved responsibility for security matters. This is for good reason. A devolved institution with an inbuilt Unionist majority (however weighted, and perhaps additionally constrained by human rights considerations) would surely be concerned less with 'confidence issues' than HMG has to be.] This is why it is suggested that the Secretary of State must retain his ultimate veto in respect of all aspects of security policy. It is possible that, as peace approaches, some areas which have been regarded as falling within the preserve of public order or security policy are no longer so regarded. Such matters might then be remitted to the Home Affairs Committee referred to above. But there might not be any such matters. There should be no presumption in favour of devolution - it should be downplayed from the outset. The fear is that transfer of such responsibility might only create the opportunity for friction between the two communities, and would therefore be a retrograde step. The experience of 1969-1972 was not a happy one. The emphasis should instead rest on the advisory role of the Assembly Select Committee on Security.



33. The arrangements proposed above bear close similarity to a model developed in the 1973 White Paper entitled 'Northern Ireland Constitutional Proposals' that led directly to the passage of the Northern Ireland Assembly Act 1973 and the Northern Ireland Constitution Act 1973. The Northern Ireland Executive that resulted was to be invited to act as an advisory committee to the Secretary of State in relation to "reserved" matters. This would have given him an opportunity to discuss matters of general public concern and interest, including law and order, with the elected leaders of the Northern Ireland community, and to take their views into account. Of particular relevance to the exercise in hand, the Police Authority (which in 1973 had been keeping a very low profile since one of its members was murdered by the Provisional IRA in December 1972) was to be reconstituted following consultation with the Assembly to increase the involvement of elected representatives, principally Assembly Members. Although the proposals were never put into effect because the Executive and Assembly were so short-lived, they seem to be equally worthy of consideration today.

#### Local Accountability

34. What HMG seeks to deliver is local, public accountability for policing other than purely counter-terrorist policing. If it is objected that it is difficult to draw a line between security policing and community policing, that is a line which 'Policing in the Community' suggests we are nevertheless prepared to draw. If 26 district community police forces is a logistic nightmare, a beefed up system of Community Police Liaison Committees advising an elective (or largely elective), public Police Commission for Northern Ireland ought to be achievable. [It is suggested that this goes some way in the direction of the Mallon Agenda (certainly not all the way), but would ex hypothesi (because the

Police Commission would perform the functions of the PANI successor body) not unduly upset the RUC or the Secretary of State or, one suspects, the Unionists. The Trimble speech referred to in paragraph 8 above would appear to confirm this.]

#### [Cross-Border Structures]

35. So far as counter-terrorist policing is concerned, an all-Ireland FBI is out of the question for the time being. But our efforts towards security co-operation with the Irish have led us to propose counter-terrorist border structures in the Republic which, so far as practicable, would mirror those in Northern Ireland. This could point in the direction of a security policy secretariat of the RUC and Garda. This does not in principle seem to be beyond the pale of acceptable Strand 2 cross-border institutions. At the same time, we are looking at other methods of bilateral security co-operation - which would be more for Strand 3. However, the appropriateness of the inclusion of either of these ideas in a contribution to the Talks Process by HMG is questionable.

36. There is an alternative, far more radical, approach that could be taken to cross-border structures that has been mentioned. This would only arise in the event of overwhelming cross-border, cross-community support for a concerted security force campaign against renegade paramilitaries who had been comprehensively marginalised by a broadly-based political settlement. It does not warrant further discussion here.]

#### Complaints

37. These proposals also make specific suggestions in respect of complaints. As the section on the ICPC concedes, reforms of that institution do not need to await a political settlement. The introduction of a role for the CPLCs in the resolution of informal



complaints need not be delayed either. However, the CPLCs will carry more weight when they are enabled to report formally to an elective - or largely elective - PCNI, as is proposed. These proposals are important in linking the local community as closely as practicable with the operations of the RUC in their midst.

#### Name, Symbols, Uniforms

38. It has been suggested that, at a point when HMG might be deciding to concede to locally elected politicians a formal influence over the formulation of security policy for the first time in over 20 years, it might be timely to consider some changes to the outward appearance of the RUC. Its very name is the source of some controversy in Northern Ireland. Would not the Northern Ireland Police Service be more appropriate? Some allegedly provocative symbols, and indeed the uniform could also be altered. [Eddie McGrady MP has recently emphasised the importance of these issues to the Nationalist electorate.]

#### The White Paper

39. What is proposed does no great violence to the tentative suggestions contained in Chapter 13 of the White Paper. This does not go much further than a purely advisory role for an Assembly Committee on Security. To tack on to this Committee a policy-making responsibility in the field of community policing would be lopsided and illogical. Any devolution of security policy would be incremental, according to the White Paper. As noted above, there are doubts about the wisdom of devolving responsibility in this field other than in a very limited and gradual way.

#### Policing in the Community

40. The proposal also aims to fit in as closely as possible with our plans for policing structures in Northern Ireland. On

the other hand, far greater democratic legitimacy would be invested in a police authority controlled and/or appointed by locally elected politicians; and it is only the prospect of an overall political settlement which would allow the realisation of this. The benefit of genuinely representative local democratic control of policing was recognised in the Hunt Report. The functions of the PCNI would remain practically identical with those proposed for PANI's successor body. There would be no revenue-raising or servicing functions. For this reason, and others, the Secretary of State would retain his overall responsibility for policing in Northern Ireland and would set objectives accordingly. He would also keep his accountability to Parliament for formulation of security policy. The proposed role of the Community Police Liaison Committees would be a significant nod in the direction of the Mallon agenda, but the localisation of community policing objectives is in any event one of POB's aims under the system to be introduced by next year's Bill. Indeed, divisional police commanders already enjoy a degree of autonomy in their commands. Further development in this direction might be something to be pursued with the RUC, without waiting for a political settlement.

#### Comparison with England and Wales

41. These proposals produce a set of arrangements markedly different from those that will exist in England and Wales. In England and Wales, there will be no equivalent of the reconstituted PCNI, and in Northern Ireland there is no equivalent of the local police authority. But this is a result of the already divergent situation, which itself reflects the very different challenges facing the police in the two jurisdictions.



Conclusion

42. As explained already, the suggestions and proposals in this paper are designed to guide debate in the Talks Process, and they are also intended to be reasonably realistic given current security policy. A threadbare, open-ended discussion would have been more appropriate if it were not the case that detailed legislation on policing in Northern Ireland may be less than a year away from introduction at Westminster. That legislation should not contain provisions which are fundamentally incompatible with our longer-term plans for the future.

(signed)

STEVEN BRAMLEY  
SEU  
SIL DIVISION  
20 MAY 1994