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DE-PROSCRIPTION OF UNLAWFUL
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Yls Boulson	29 April 1974	BIF SP review	7/5/72		
Mr Perkins (please return ASAP)	1 MAY 74	May 1987			
Mr Coulson		2nd REVIEW			
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Mr Coulson	6/8/75	UK 19 5 BOX 35			
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DE-PROSCRIPTION OF PROSCRIBED ORGANISATIONS

Introduction

From time to time the question arises whether any organisations should be taken off the proscribed list in Schedule 2 of the Northern Ireland (Emergency Provisions) Act 1973. Typically, the question arises out of the possibility that, by making membership of the organisation lawful, the politically motivated members would be enabled to outweigh those who favour the use of violence and lead the organisation towards peaceful policies. Often the question arises urgently, as, for example, before the Assembly elections in 1973 (when the Republican Clubs were made lawful) and before the Westminster election in February 1974 (when in fact no action resulted). This paper attempts to set out the considerations which are likely to arise when the issue next crops up (as it seems bound to do). It does not go into the merits and demerits of proscription as such.

Procedure

2. The organisations currently proscribed are: The IRA; Cumann na m'Ban; Fianna na h'Eirann; Saor Eire; Sinn Fein; the UVF; the UFF; and the Red Hand Commando. For any of them to be de-proscribed before July 1974 would require an Order in Council which would be subject to affirmative resolution in Parliament.
3. In July, Schedule 2 will expire with the rest of the Act (so that all the organisations would become lawful), unless an Order in Council (subject to affirmative resolution) renews it in whole or in part. If any part of the list is to be renewed, the Secretary of State would no doubt feel obliged to say in Parliament, that the organisations still to be proscribed "appear to him to be concerned in terrorism or in promoting or encouraging it". (section 19(4) of the Act). If an organisation now in the list by then succeeded in giving the impression that it was not so involved in terrorism it would be an obvious candidate for de-proscription.

4. Of the organisations currently proscribed, Sinn Fein and the UVF seem to be the most obvious candidates for legalisation. The IRA (with which must go Cumann and Fianna) is still obviously committed to violence. The UFF and Red Hand are separable, but neither gives any sign of ceasing to engage in terrorism. Sinn Fein, however, is capable of presenting itself (perhaps more in the Official wing than in the Provisional) as a non-violent political organisation, and the UVF claims not to have engaged in violence since December 1973. The Secretary of State's discretion to de-proscribe is entirely unfettered: he is not required to say that the organisation concerned is not "concerned in terrorism or in promoting or encouraging it," but he might feel obliged to say so.

Security Factors

5. Clearly, the first consideration in deciding whether to de-proscribe is security. It would be necessary to decide what part the organisation played in the organisation and fomenting of violence, and what the effects of de-proscribing it would be in security terms. It is possible in this latter context that short-term losses, from the security point of view, would be offset by later gains. For example, to de-proscribe Sinn Fein might lead to violence by Protestants in the short, but not the medium or long term. A factor in this would be an assessment of what it was thought the organisation would do with its new freedom (see also below under "Preliminary contacts").

6. It would be difficult to overlook, in the security context, the practical value of proscription. How many prosecutions, for example, had there been, and had dangerous men been caught? The danger of this argument, if used publicly, would be that a paucity of prosecutions in respect of the organisation which was to be de-proscribed might be matched by a similar paucity in respect of an organisation which was not. If proscription does not work, it would be argued, it should be ended altogether.

7. A third factor in the security context is the Government policy on detention. If, by July, some 150-200 detainees are to be released, on the basis (*inter alia*) that the criminal courts are increasingly capable of dealing with violence, some incongruity might be seen if at the same time some of the criminal offences specifically designed to deal with violent organisations were repealed. On the other hand it could

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be argued that security and politics cannot be treated separately; that the release of detainees and de-proscribing of some organisations could represent a genuine attempt without running unacceptable security risks, to provide people who hold extreme views to express them politically and not through violence. The presentation of such an argument, and the risks it entails, are described below (under "Presentation in Parliament")

Political factors

8. The paper has already touched on political factors. In Northern Ireland these consist particularly of the effect on political parties of legalising a particular organisation. It has been thought in the past, for example, that legalising Sinn Fein would be too much for moderate Unionists to swallow and, therefore, damaging to Mr Faulkner. The situation has changed, however, in that the UVF is no longer the only "Protestant" proscribed organisation, and is claiming to observe a "cease-fire". It is therefore possible for the legalising of Sinn Fein to be balanced by the legalising of the UVF, without there coming to be any "Protestant" organisations on the proscribed list to counter-balance the continued proscription of the IRA etc.
9. At Westminster proscription has not been generally popular, but, whenever terrorist acts by Irish extremists occur in England, pressure builds up in some quarters for the proscription of whatever organisation is thought to have been responsible (usually the IRA, but Saor Eire claimed the coach attack which killed 12 on the M62). De-proscription in Northern Ireland could not, therefore, entirely ignore the prevailing opinion in Great Britain on the subject.
10. An assessment would clearly have to be made of the political results of de-proscription. There would probably be a lot of imponderables unless prior contact with the organisation(s) concerned had established with some certainty how they would react to de-proscription, (the factors involved in such preliminary contact are described below). Obviously a de-proscribed organisation would be able to operate in the open. The change might not be all that dramatic, however, because:-

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- (a) the organisation might have limited financial and other resources (for the purchase of property, dissemination of literature, employment of officials etc)
- (b) the organisation might already have given the impression of being relatively "open" (eg Official Sinn Fein, which holds meetings and achieves a lot of publicity);
- (c) the organisation might find some difficulty in deciding what to do with its new found freedom and how to establish itself as a lawful organisation.

Unless the moderates took steps quickly to establish and illustrate that de-proscription was valuable to the organisation, the extremists would be able to argue urgently for a return to violence. It would, therefore, be worth considering what HM Government might do after de-proscription in order to strengthen those in the organisation who favoured political, non-violent policies and reduce the risk of proponents of violence reasserting themselves. In this context, the rate of release of detainees is relevant. Once a de-proscribed organisation was seen to be acting politically, a substantial release might be justified. Although it might be valuable in strengthening the moderates it could, on the other hand, weaken them by putting into circulation a lot more "extremists".

Preliminary contacts

11. This paper has already touched on the possibility that, before de-proscribing an organisation, HMG should have discussions with it in order to see whether the organisation was prepared to make concessions in order to win de-proscription. This has, of course, already been attempted with the IRA, and when the news of his talks leaked Mr Whitelaw said in Parliament that neither he nor any of his officials would again enter into such talks with the IRA, or any intermediary. Although that commitment was personal, and does not bind any future Secretary of State, it could not be ignored if any further "negotiations" were being considered, especially if they were to be with the IRA. *112 Mr. P. says in record (Times 2 Mar 74) that he would not talk to the IRA.*

12. The risk in any such talks is that their having taken place would become known.

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Given the nature of the organisations involved it would be wise to assume that it would. The question then is how they could be justified, and this is dealt with below.

13. The value of preliminary contact is that it might reveal something about the attitudes within the organisation. The relative strengths of the "moderates" and "extremists" might be assessed, but it would be important to ensure that preliminary contact was not restricted to that group within the organisation which favoured non-violence, who would be bound to exaggerate their own influence. The danger in communicating with the organisation as a whole is that the moderates would be inhibited from revealing their plans and attitudes in front of their wilder colleagues. Separate contact with each group would be feasible, but, if it became known (as seems likely) it would probably result in a loss of trust all round. It would be important, therefore, to have very good intelligence of the strengths of the different groups within the organisation before it could be decided whether discussions were likely to achieve anything.

14. This intelligence would also have to cover the extent of the organisation's involvement in terrorism. Proscription has to be justified by such involvement, and its extent would help to indicate the real strength of those within the organisation who opposed violence. Conversely, de-proscription would have to be backed by a Ministerial statement that the organisation was not thought to be concerned in terrorism.

15. An assessment would, finally, have to be made, on the basis of intelligence and the preliminary contacts (if any) of what it was reasonable to hope to gain from de-proscription. In the case of Sinn Fein, for example, the hope would presumably be to achieve some detachment of them from the IRA. Sinn Fein, however, might have to be treated as two separate organisations - Provisional and Official. Provisional Sinn Fein statements tend to imply support for violence ("our boys struggling against oppressive forces" etc), whereas the Officials' cease-fire has made Official Sinn Fein a shade more "political" and "respectable". Theoretically it might be possible to de-proscribe Official Sinn Fein and leave the Provisional Sinn Fein proscribed, but this would have to be studied from the legal point of view.

16. The UVF claims to be observing a cease-fire. If that continues, and the UVF becomes identified less in the public mind with terrorism (and especially sectarian murders), its "going political" might become credible.

17. The concessions which might be sought from the UVF and Sinn Fein are:-

- (a) establishment as a political party, with a political programme, and a commitment to stand in elections and, perhaps, to sit in the Assembly if elected;
- (b) a renunciation of violence;
- (c) perhaps, in the case of the UVF, a change of name (the word "Force" makes the organisation look like a private army, which makes de-proscription more difficult); and
- (d) in the case of Sinn Fein, a move away from the practice by which its senior officials are people identified with (and in fact holding office in) the IRA.

18. If such concessions were sought in secret talks before de-proscription, the problems of presentation (discussed further below) are complex. If a bargain was struck, it might not be possible to publicise it (as the organisation would want to be seen to be acting of its own initiative after de-proscription, and not to have taken part in "a deal with the Brits"). The perennial question whether the negotiators could deliver their side of the bargain would also crop up. If they could not, and the defence of the proscription depended on the bargain being kept, HMG would be embarrassed and might have to consider re-proscription. Finally, HMG might fail to win any concessions from the organisation, but still want to de-proscribe in the hope that there would be a favourable response. To do so, however, after failing to reach agreement, they would be seen (by the organisations at least, and by the public if the talks became known) to have acted from weakness.

19. On the other hand, not to have preliminary talks, and then to de-proscribe would amount, so far as possible political gains at the expense of terrorists were concerned, to a shot in the dark. The hope would be, based on intelligence assessments, that a favourable political response would be made, but the risk of a

damaging snub - perhaps in the shape of renewed support for violence - would be strong.

Presentation in Parliament

20. The necessary explanation in Parliament of why an organisation had been de-proscribed would have to cover security and political grounds. As already stated, it would, in practice, be virtually imperative to say that the organisation was no longer "concerned in terrorism or in promoting or encouraging it": It would also be necessary to say that de-proscription was not likely to damage security either through the supporters of the organisation itself or its most violent opponents. Whether this could be said would depend on the situation at the time. If, for example, Sinn Féin and the UVF were de-proscribed at the same time, there might be a risk that Protestant extremists (the UVF etc) would step up their violent activities in order to show:-

- (a) that they were still in business as representatives of whatever they claim to represent;
- (b) that if the law would not deal with Republicans, they would. The IRA might undergo parallel temptations.

20. On political grounds, de-proscription could be presented as affording an opportunity to people in those organisations to express and promote their views peacefully in public, instead of by violence in secret. The complications if any secret bargain had been reached, have already been mentioned. An additional publicity problem would exist if there had been talks which failed, followed by no de-proscription, and a leak that the talks had taken place. The talks themselves would then have to be capable of being justified both on security and political grounds.

21. From what has been said so far it seems reasonable to conclude, in terms of public presentation, that:

- (a) any preliminary talks and/or subsequent de-proscription would have to be justifiable on security grounds, both generally (in relation to all levels of violence, intimidation etc) and particularly (in relation to the

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- organisation(s) involved;
- (b) that the weight to be put on the political justification for preliminary talks and/or de-proscription would depend on the confidence HMG had that political benefits (and not a damaging snub) would result; To rely heavily on the political justification might be taken to imply recognition that a sacrifice of security was involved, which would look like a dangerous gamble.
 - (c) heavy reliance in public presentation on the security grounds for de-proscription would not prevent people from drawing their own conclusions as to the possible political benefits, while avoiding the risk at (b) above.

One possibility which this paper has not so far touched on, is that the talks should not be held in secret. At first sight it would appear that the obvious political dangers would outweigh any advantages. However the proposal does have some attractions:

- 1) it would allow the Government ~~press~~ institutions to create a climate more favourable to the idea of such talks
- 2) it would create a situation where any breakdown in negotiations would be seen as stemming from the particular organisation.
- 3) it might then be easier for the Government to justify starting or breaking down talks in the light of the security situation
- 4) most importantly, it would not create a situation where it could be greatly to the advantage of the proscribed organisation to leak news of secret talks, which proved so embarrassing to the Government in its dealings with the IRA. In other words, it removes a crucial weapon from the 'opponent's' armoury and weakens this bargaining power.

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cc: Mr Bampton

Mr Trevelyan

PROSCRIBED ORGANISATIONS

Attached is an attempt at a "think-piece" on the possible de-proscription of the UVF and Sinn Fein. It was prompted by Mr Woodfield's note of 25 February (also attached).

The paper was written before the General Election, and something different may now be required. It might, however, serve as a basis for discussion, which could extend over the whole field of proscription, and lead to the preparation of a more widely-ranging paper covering all the options.

Division 3

J F HALLIDAY
6 March 1974

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