

Ref.A083/3125

PRIME MINISTER

Anglo-Irish Relations: Northern Ireland

In his minute to me of 7 October, Mr Coles said that you would find it helpful to have, before the Anglo-Irish Summit, a considered assessment of the ideas being floated by the Irish for a new approach to the question of Northern Ireland. I now attach such an assessment in the form of a note by officials of the Foreign and Commonwealth Office, the Northern Ireland Office and the Cabinet Office. There will be an opportunity to discuss it with the two Secretaries of State concerned at your briefing meeting for the Anglo-Irish Summit at 3 pm tomorrow, 4 November.

2. The Irish ideas are imprecise and vary significantly according to who is presenting them. For this reason the assessment is necessarily tentative and some of its conclusions must be regarded as provisional unless and until we have a clearer idea of what the Irish might want, and of the relative priority they would attach to the different elements in what may or may not turn out to be a negotiating package. More detailed work could for example be done on joint policing or joint judicial arrangements if it appeared that the Irish (and the SDLP) were willing and able to offer us a sufficiently substantial political quid pro quo to make such ideas realistic. Meanwhile officials conclude that, while a very limited Garda Siochana presence in Northern Ireland might be acceptable and even useful, any arrangements which we might be able to contemplate for this would fall a long way short of Irish expectations. It also concludes that there is no practical requirement for joint judicial arrangements, which would be fraught with legal and constitutional difficulties.

3. The fact is that we do not know enough about Dr FitzGerald's own ideas to firm a definitive judgment on them. If the Irish proceed cautiously and handle their own political opinion skilfully, it is just conceivable that a balance might eventually be struck at an acceptable level of advantage to both the Republic and the United Kingdom. But the assessment spells out

the reasons why this seems unlikely; and on the basis of what we have been told of Irish thinking so far, the provisional view of officials is that no Irish Government is likely to be able to deliver these ideas in a form which would meet the British Government's political requirements; and that the consequences of seeking to implement them might well be to bring down Dr FitzGerald's Government, to destroy the credibility of the SDLP and to raise the level of IRA violence in the North. It will be for Dr FitzGerald, if he decides to float these ideas with you at the Summit, to explain why he apparently takes a more optimistic view.

4. Officials nevertheless argue that it would be premature to dismiss Dr FitzGerald's ideas out of hand. At this early stage of the game I am sure this is right. Dr FitzGerald's desire to find a new approach to the problem of the North appears genuine and serious, and this likely to weigh favourably with opinion in the United States. There are also elements in his thinking which it might be possible to turn to British advantage. Officials therefore recommend that, in your tete a tete with Dr FitzGerald at the Summit, you should listen sympathetically to what he has to say; probe him on the realism of his approach; and, while striking a strongly sceptical note, make it clear that you would be prepared to look at any practical and realistic ideas which might help to reduce the level of violence in Northern Ireland. At the same time you will wish to make it quite clear that any such ideas would have to be fully consistent with the obligations of the British Government to the people of Northern Ireland and that, for this reason, there can be no question of joint sovereignty.

5. I am sending copies of this minute and its attachment to the Foreign and Commonwealth Secretary and to the Secretary of State for Northern Ireland.

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ROBERT ARMSTRONG

3 November 1983

Ireland

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Pt 14



ANGLO-IRISH RELATIONS: NORTHERN IRELAND

INTRODUCTION

Since returning to power in December 1982, Dr FitzGerald has given priority to restoring Anglo-Irish relations from the low point reached earlier in the year under his predecessor. He is hoping that the Anglo-Irish Summit at Chequers on 7 November will signal that relations have now returned to normal.

2. Following the return to power of the present British Government in June this year, Dr FitzGerald believes there is the prospect of a period of political stability in London and Dublin of which use should be made to find a new approach to what the Irish see as the running sore of Northern Ireland. This belief is reinforced by genuine Irish fears that, unless some way can be found of eroding the influence of the Provisional Irish Republican Army over the minority community in the North and ending the community's alienation from the forces of law and order there, Sinn Fein will continue to advance, the SDLP will disintegrate and violence and instability will spread to the Republic.

? 3. The Forum for a New Ireland, originally set up largely to help the SDLP in the forthcoming British General Election, is being used by Dr FitzGerald as a sounding board for new ideas and to help educate nationalist opinion in the Republic to the formidable difficulties in the way of making progress towards the unification of Ireland. Meanwhile, looking ahead to the period after the Forum reports in early 1984, he has apparently licensed certain of his associates to explore informally with British Ministers and officials the possibility of changes in the relationship between North and South which would ostensibly leave the position on sovereignty unchanged but establish some visible Southern presence in the North. ? = =

Common Ground - Condemnation of PIRA
willingness to take action against
steps to reduce their influence

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4. The Irish ideas are neither precise nor consistent and vary markedly according to who is presenting them. But the central concept appears to be to strike a balance whereby in return for participation by the South in the security (and judicial) processes in the North, the Irish Government and the SDLP would abandon or cease to press the Republic's territorial claim and, in the case of the SDLP, play a full part in the political life of the Province, including in some variants acceptance of a majority (Unionist) devolved Government. In the version of these ideas presented by Mr Michael Lillis, Head of the Anglo-Irish Division in the Ministry of Foreign Affairs, recognition of the British dimension could involve a referendum to remove the territorial articles from the Irish Constitution and explicit acceptance by the Irish Government of the Union. In other versions, however, the "British dimension" is much more vaguely acknowledged and the aim seems to be to move towards a form of joint sovereignty over the North. The Irish have told us that Dr FitzGerald will wish to explore some of these ideas with the Prime Minister at Chequers on 7 November. Meanwhile they are beginning to appear in the press, and there is evidence that the Irish Government are keeping the United States Government informed.

5. The purpose of this note is to describe the Irish ideas in the various forms in which they have been floated, set them in context, assess their motivation and likely impact, North and South, and suggest how, in the light of the analysis, they might best be handled diplomatically at the Summit and in the period before the Forum reports.

THE IRISH IDEAS

6. The ideas which the Irish have been floating can best be described under three headings.

Irish Constitution

7. In a series of conversations with Mr Goodall, Mr Lillis, who is known to be close to the Taoiseach and claims to reflect his views, has suggested that the Government of the Republic might be prepared formally to recognise that Northern Ireland was, and would remain, part of the United Kingdom. For this purpose, he has suggested that the Irish Government might be willing to

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seek to amend Articles 2 and 3 of the Irish constitution so as to remove the territorial claim and substitute a long term "aspiration" to Irish unity. (He has also talked of building on Article 3 without recourse to constitutional amendment, possibly by means of a declaratory statement). This idea has been hinted at in documents considered by the Forum. But Mr John Hume of the SDLP told the Secretary of State for Northern Ireland on 7 October that he regarded the idea of constitutional amendment as "fanciful"; while Mr Barry made clear to Mr Prior on 19 October his view that amendments to the constitution were "not practicable". Ideas for amending the territorial provisions in the Irish constitution have a long political history in the Republic, which is examined in a Note at Annex A.

Security

8. It is a common theme of all the Irish interlocutors that, if terrorism is to be defeated, arrangements need to be devised to arrest and reverse the alienation which the minority community is currently held to feel towards the forces of law and order in Northern Ireland. All of them argue that this alienation is a root cause of the decline of the SDLP as the authentic and legitimate voice of the Catholic minority and of the consequent increase in support for Provisional Sinn Fein. As expressed by Mr Lillis, the suggestion is that the British Government would agree to participation by the Garda (and possibly the Irish Army) in security operations in the North (especially in Catholic areas) and would be willing in some way to associate members of the Irish judiciary with the judicial process in the North. These ideas too have a history; at Annex B is a note on the way that Dr FitzGerald's views on all-Ireland policing have developed over the past decade. Nevertheless, although Dr FitzGerald was talking about an all-Ireland police force as recently as November 1982, it is clear that the balance of opinion among his advisers is strongly against reciprocal policing arrangements in the Republic. Mr Barry, in his conversation on 19 October with Mr Prior, spoke in terms of the Garda or Irish Army patrolling minority strongholds in Northern Ireland. Their allegiance would be to the Irish Government. They might have a distinctive uniform but act jointly with the RUC or even the British Army. They would enable the Tricolour to be raised in minority areas. Mr John Hume has talked in similar terms. Mr Barry did not rule out some sharing among the judiciaries and could see no objection to Irish judges sitting with Northern Ireland judges, nor to this arrangement being reciprocated in the Republic.

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Government in Northern Ireland

9. According to Mr Lillis, the third element in a possible 'package' would be acceptance by the SDLP of a Stormont Government elected by majority vote (ie not power sharing, which had no future) and SDLP participation in the political structures created for this purpose (ie the Northern Ireland Assembly). But Mr Hume, in talking to the Secretary of State for Northern Ireland, while confirming that the SDLP might be prepared to accept majority rule, placed it more firmly in the context of joint sovereignty (ie of Republican involvement in the administration of justice) than of simply a "green presence on the streets". Mr Barry suggested that the Garda or Irish Army elements patrolling minority strongholds in the North might act under the authority of the Irish Government or the SDLP. While judging that Mr Hume was firmly in control of the SDLP, Mr Barry took the view that unless some role (he was not specific) could be found for the Party, its prospects were poor and it might not continue for more than two or three years.

BACKGROUND TO IRISH IDEAS

10. There is a growing recognition in Irish political circles that the unification of Ireland by consent (the declared aim of all the main parties in the Republic) is at best a long term aspiration. This new realism has been encouraged by the setting up of the New Ireland Forum in March 1983. But the population at large in the Republic remains generally indifferent towards Northern Ireland and profoundly ignorant of it. There is also considerable reluctance to become involved in the Northern Ireland problem and a persistent gut feeling that, ultimately, unity is the only just solution. At the same time, there is also increasing disillusionment with the violence in the North and fear of what may happen if the political and security situation there cannot be stabilised. Responsible Irish politicians in all the three main parties share Dr FitzGerald's worries about the alienation of the minority community in the North. They fear that the Provisional Sinn Fein will continue to make electoral headway (eg in the 1984 European elections) and that the SDLP will become discredited and even break up. This would leave the minority community without effective representation by politicians opposed to violence. It would also provide the Provisionals with legitimacy and a political base from which to challenge the southern state at a time of growing economic difficulty and high unemployment, particularly among the young.

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11. To that extent, the climate of opinion in the Republic would probably be favourable to a new Irish initiative which would signal a greater readiness to take account of British and Unionist concerns in the North. As against this, however, the pattern of Irish politics is still that established by the civil war. The Republican and nationalist tradition is still the dominant element in the identity of the southern Irish state, and its symbols and slogans are the common currency of political life. Fianna Fail (the "natural party of government" in the Republic) claims to be the natural and sole heir to that tradition; but no political leader in the Republic can afford to be seen as pursuing policies which contradict it. Dr FitzGerald has consistently tended to underestimate and mishandle the conservative and nationalist forces in Irish society (and in his own party) and it is difficult to have confidence in his ability to carry his party or the country in what would (if Mr Lillis' account of his ideas is taken at its face value) amount to a major departure from the central tradition of Irish politics.

12. In short, it is difficult to believe that Irish opinion generally, or even the Fine Gael and Labour parties, would be ready to make a formal surrender of the constitutional claim to the North without much more substantial concessions to the minority than Dr FitzGerald, as interpreted by Mr Lillis, might have in mind. Abandonment of the demand for power sharing and SDLP acceptance of majority rule would also go deeply against the grain of opinion in the South, which sees the Protestant ascendancy as the historical cause of all the present problems in the Province. Nor is opinion in the South sympathetic to proposals to link the police or judicial systems North and South, as Dr FitzGerald found out after his 18 November 1982 speech. Nationalist opinion would be unwilling to see the Garda subordinate to the Northern Ireland authorities and would fear for their safety; and RUC operations south of the border would, depending on their extent and visibility, provoke a response ranging from suspicion to outright hostility.

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13. Fianna Fail's attitude towards any new initiative by the Irish Government would be of great importance. Dr FitzGerald probably still hopes that Mr Haughey will join a consensus in the New Ireland Forum out of respect for the SDLP and from a desire to appear statesmanlike. But Mr Haughey may well prefer to cut loose and present himself as the defender of the true nationalist tradition. This temptation would be greatly increased if proposals as vulnerable to nationalist attack as Mr Lillis' were put formally on the table.

LIKELY IMPACT IN NORTHERN IRELAND

14. This section examines the Irish ideas from the standpoint of the situation in Northern Ireland and their likely impact there.

15. To start with security, there are a number of ways in which, for both practical and presentational reasons, it would be to the advantage of the United Kingdom to improve co-operation with the Republic in the law and order field. There are also steps which might be taken, in the area of joint policing in Northern Ireland, which, while they would have no great advantage to the United Kingdom, need not raise insuperable legal and constitutional problems. The kind of measures, within these two categories, which might be taken are outlined in Annex C which also discusses the possibility of joint judicial arrangements.

16. Although Mr Lillis has been guarded in his presentation of this element of the package, it is plain that none of the steps outlined in Annex C would measure up to the expectations of Mr Hume and Mr Barry as set out in paragraph 8 above. Indeed, in so far as they require the Republic to give extended co-operation against Northern terrorism without any clear reciprocal benefit for the South they could have little appeal to many strands of Republican opinion. What Mr Hume and Mr Barry appear to want is some form of joint authority in law and order matters, even extending to a separate police force in the minority strongholds which would be responsible to the Republic's Government; and there is talk of a joint police authority. The responsibility for preserving law and order in a State is, perhaps, the most fundamental element of its sovereignty; and officials assume that Ministers would rule out in principle the derogation from full sovereignty

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which would be involved in conceding to the Republic the responsibility for policing areas of the North. Any question of principle apart, there would be grave and probably insuperable practical problems in attempting to deal either with the overall terrorist threat or with particular incidents (for example, a major riot in Londonderry) through the medium of two forces and command structures. And there would be a serious risk that Unionist resentment at the presence of the Garda or the Irish Army would express itself in paramilitary activity.

17. At this stage the Lord Chancellor and the Lord Chief Justice of Northern Ireland have not been consulted about the possibility of joint judicial arrangements, and Annex C accordingly takes no account of any views that they may have. Officials' present conclusion is that there is no practical case for joint judicial arrangements (in which Mr Hume has, in any event, indicated that he has no great interest) and that they would be fraught with legal and constitutional difficulties.

18. Even if HMG could go all the way to meet the aspirations of Mr Barry and Mr Hume in the law and order field, the proposition that that would suffice to persuade the minority to accept a devolved Unionist majority government in the North must itself be treated with great reservations. Mr Hume has already hedged on it. But even if the SDLP, who can still claim to represent most of the minority, were willing to accept such a package, there can be no guarantee that they would retain minority support in doing so. There is a real possibility that, on the contrary, they would drive more of the minority into the arms of Sinn Fein, the very thing which the Republic is most anxious to prevent. The SDLP presents itself at present as a rudderless ship: it is essential, in evaluating the Lillis package and its variants, to look beyond what might serve SDLP interests as they at present perceive them, and consider how far proposed developments might serve to improve stability in Northern Ireland and ensure just government for both communities there.

19. In this context, the suggestion that the SDLP might be prepared, not only to participate in the Assembly but also to abandon the objective of power-sharing and accept devolution of power to a majority-based government, is surprising. At most, therefore, the degree of devolution envisaged might turn

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out to be limited. Clearly security matters would be excluded unless the arrangement envisaged a sharp division between Protestant and Catholic areas, with the former having security control in their areas to compensate for a wide measure of Republican control in the latter - a concept which would not fit the untidy way in which the communities are distributed around Northern Ireland.

20. Real devolution of power to the majority in all non-security matters would mean that the minority would perceive the ordering of daily life (housing, health service, school, jobs etc) entrusted to a government of a kind which they had learned to distrust so profoundly between 1920 and 1970. To counter balance this, a great deal of weight would need to be borne by the presence of "their own Garda" on the streets. Sinn Fein would accuse the SDLP of a sell out; and the United Kingdom interest would not be served by an arrangement which led to the destruction of constitutional nationalists and their replacement by Sinn Fein.

21. It is unlikely that the SDLP would commit itself to a bargain that represented electoral suicide. It therefore seems likely that any degree of devolution which they would be prepared to entertain would involve severe restraints on the exercise of power by the majority. They might also seek a right for the minority to appeal to the British Government if dissatisfied. Alternatively, they might expect that far reaching arrangements for policing in "Catholic" areas would in due course be followed by similar arrangements in political, administrative and other fields. Such an approach would certainly not be seen as a concession to Unionists. Moreover, both Mr Hume and Mr Barry have indicated that the SDLP's readiness to abandon power-sharing is founded on the belief that participation in an administration which was predominantly Unionist would be seen by their constituency as a sell-out. It is also noteworthy that all the variants of the Irish ideas appear to place the emphasis on separate treatment for the nationalist and Unionist communities, rather than on reconciliation and co-operation between them.

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22. Unionists have made much of the claim on the territory of Northern Ireland in the Constitution of the Republic. The claim is cited in justification of Unionist hostility to the Republic and suspicion of the minority in Northern Ireland as giving their loyalty to a hostile foreign power. Removal of the claim would be important, but Unionists would see it as a belated recognition of reality rather than a major concession for which they should pay a substantial price. Some would even say that changing words means little and the intention remains the achievement of unity. Withdrawal of the claim accompanied by acceptance by the minority of devolution of real power to Unionists would be more convincing and might tempt many Unionists to tolerate concessions to the minority which would not otherwise be acceptable. But co-operation with the South on security which was seen as undermining sovereignty would not be acceptable and could provoke a violent reaction.

CONCLUSION

23. What emerges from the foregoing analysis is that there is no clear or coherent package or proposition on offer from the Irish side and that in consequence no definitive judgements can be made at this stage. It would appear that Dr FitzGerald, judging that the moment is right for some new initiative on the North, is testing the market to see what may be saleable to the various interested parties, ie to the British, the SDLP, the Unionists, his own political colleagues and Irish opinion generally. This goes some way to explain the conflicting accounts of the Irish ideas which we have been offered. It remains to be seen whether Dr FitzGerald himself will develop his ideas in the tete a tete with the Prime Minister at the Summit on 7 November, and, if so, in what form.

24. With those general provisos, the following tentative conclusions can be drawn -

- i. the underlying motive of the Irish in floating these ideas is to induce the British Government to re-appraise its approach to the problem of Northern Ireland and to do so before the Forum for a New Ireland reports in early 1984. Keeping the United States Government informed almost certainly has a dual purpose; to underline the seriousness of the

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exercise, as far as the Irish Government is concerned, and to exert vicarious leverage on the British Government not to be prematurely dismissive;

ii. there must be great scepticism whether any of the variants of the so-called Lillis package could be combined in such a way as to satisfy the conflicting interests of the British Government, the Irish Government and the two communities in Northern Ireland;

iii. although Dr FitzGerald himself has long recognised that the orthodox Irish nationalist approach to unification is unrealistic, he has still to find an alternative approach which could attract widespread support in the Republic. It looks as if he sees some form of joint sovereignty over the North as the most promising possibility. Even though he must be aware that joint sovereignty as such is unacceptable to the British Government, his ideas on joint policing and joint judicial arrangements may well be intended as a means of moving things in that direction.

iv. formal acceptance of the Union by the Irish Government, whether through constitutional amendment or declaratory statement, would be important and welcome to the United Kingdom. But whether Dr FitzGerald could deliver such acceptance must be open to serious doubt. If he attempted to do so, he might well create a political storm in the Republic which he would be fortunate to weather;

v. the suggestion that the SDLP might be prepared, not only to participate in the Assembly, but also to abandon the objective of power-sharing and accept devolution to the majority is surprising. It seems likely that such a policy could be contemplated by the SDLP only in exchange for far-reaching concessions by the British Government in the law and order field, accompanied by such severe limitations on the exercise of devolved power by the majority that it would cease to hold any attractions for the Unionists;

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vi. there are ways in which, for both practical and presentational reasons, it would be to the advantage of the United Kingdom to improve co-operation with the Republic in the law and order field. There are also steps which might be taken which, while having no great advantage to the United Kingdom, need not raise insuperable legal and constitutional problems. However, it seems unlikely that such steps would measure up to Irish expectations; and there would be grave and probably insuperable practical problems in going further towards the introduction of two forces and command structures in Northern Ireland;

vii. there is no practical case for joint judicial arrangements which would be fraught with legal and constitutional difficulties;

viii. the fact that Dr FitzGerald's ideas may be impractical, or would be likely to create political difficulties for him at home if he launched them publicly, is not necessarily an argument for warning him off. It could be advantageous to the United Kingdom, both internationally (eg vis-a-vis the United States) and domestically if an Irish Government were seen to have abandoned the Republic's traditional insistence on territorial unification; and if progress towards the new relationship between the Republic and the North were seen to be frustrated by Irish nationalist, rather than Unionist, intransigence, that too could be helpful.

25. Against this background, the best approach for the Prime Minister to adopt at the Summit might be to listen to whatever Dr FitzGerald has to say and, if it turns out that he does develop some or all of the ideas in the Lillis package, confirm that the general message (ie that the Irish Government is looking for a new approach to the problem of Northern Ireland) has been received and understood. She might then say that since she has hitherto had only conflicting accounts of what the Irish have in mind, she is not yet in a position to give a considered reaction. The history of Ireland shows that initiatives designed to improve relations between North and South, however well intentioned, are all too likely to fuel prejudice on one side or the other and to raise, rather than lower, the level of violence.

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26. The Prime Minister might rest on the position that no British Government would wish to reject out of hand any practical and realistic ideas which would help to reduce the level of violence in Northern Ireland, provided that they were fully consistent with the obligations of the British Government to the people of the Province and the Irish Government, for its part, was in a position to carry them through. Schemes based on joint sovereignty would definitely not be acceptable; but limited arrangements of a practical nature might be possible. She would, in due course, be prepared to consider the possibilities if they offered the hope of a practical and useful way forward.

Cabinet Office

1 November 1983

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ANNEX A

IRISH CONSTITUTION AND NORTHERN IRELAND: RECENT POLITICAL HISTORY

1. Article 2 of the 1937 Irish Constitution states that:

"The national territory consists of the whole island of Ireland, its islands and the territorial seas."

Article 3 states that:

"Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect."

2. The drafting of Articles 2 and 3 marked the culmination of de Valera's campaign to annul the 1922 Treaty. The Irish newspapers at the time dismissed the two Articles as naive and counter-productive. The Fine Gael party was also sceptical of their value and one Fianna Fail Minister objected to the irredentist claim on the North, doubting its validity in international law. On the other hand, there was much criticism from others based on the view that the Articles were not sufficiently Republican.

3. The Constitution remained unchanged for over 30 years. By the late 1960s, the Irish Republic had become a much more liberal and secular society which no longer accurately reflected the social ideas built into the Constitution. The Fianna Fail leadership continued to claim that their policies were consistent with de Valera's orthodoxies but made no pretence that the Constitution would suit a united country.

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4. In 1966, at a time when relations with Northern Ireland were going through a short-lived honeymoon period, Sean Lemass, the Fianna Fail leader and Taoiseach, set up an all-party committee of senior politicians to conduct a general review of the Constitution. The Committee made several radical recommendations, one of which was that a gesture should be made to the North by deleting from Article 3 the words "and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory". In the Committee's view this would not relinquish the Republic's right to re-integration of the national territory, but would remove some friction in North-South relations. The idea shocked the fundamentalists in Fianna Fail, the "greenest" of the political parties in the Republic, to whom Articles 2 and 3 remained sacrosanct as de Valera's most formal legacy on partition. The Committee's report was not acted upon.

5. From 1969 onwards, the question of amending the Constitution has been discussed almost wholly in the context of the Northern troubles and of a hypothetical united Ireland. In May 1972, Jack Lynch, Taoiseach and Fianna Fail leader, set up an all-party Committee of parliamentarians to study the implications of a united Ireland and to make recommendations as to the steps required to create conditions conducive to a united Ireland. The Fianna Fail representatives on the Committee insisted that amending Articles 2 and 3 of the Constitution could be contemplated only in the context of a change in the status of Northern Ireland and as part of a settlement with Northern leaders. Many of the senior members of the opposition parties did not agree and were prepared to make changes then as a gesture to the North. Because of disagreement on this issue, the attention of the Committee centred on Article 44 of the Constitution relating to the special position of the Catholic Church. This Article was subsequently amended.

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6. In 1973, the Irish Coalition government (Fine Gael and Labour) signed the Sunningdale Agreement in which the South formally recognised that Northern consent was a pre-condition for unity. Kevin Boland, a senior member of the Fianna Fail party until his resignation in protest at what he regarded as the party's weak approach to the Northern problem, challenged the Agreement in the Supreme Court on the grounds that it was inconsistent with Articles 2 and 3 of the Constitution. Although unsuccessful, this action circumscribed the Coalition's policy options and was a reminder to the Fianna Fail leadership of the strength of nationalist feeling on the issue.

7. Jack Lynch, whose policy on Northern Ireland rejected the traditional emotive interpretation of Republicanism, nonetheless repeated the Fianna Fail orthodoxy on Articles 2 and 3 in an interview with the Irish Times in December 1977.

"In relation to Articles 2 and 3 ... I adhere to the view that the time to discuss this is when elected representatives of North and South get around a table to discuss the future of the country..."

Even so his views were criticised by some members of his party as insufficiently radical, and in 1979, he was replaced as leader by Charles Haughey who, since the beginning of the troubles in Northern Ireland, had adopted a harder line Republican stance than Lynch and had sought to present himself as the spiritual heir of de Valera.

8. In June 1981, a Fine Gael-Labour Coalition Government was returned to office headed by Dr Garret FitzGerald. The new Taoiseach had long been a critic of the 1937 Constitution and had argued in his book "Towards a New Ireland" (published in 1972) that the Constitution was marked by Catholic thought and should be amended to take account of the sensitivities of Northern Ireland Protestants. He later came to favour the modification of Articles 2 and 3, and in September 1981 launched a "Constitutional Crusade". He argued that the Constitution had entrenched Partition and that Articles 2 and 3 were offensive to the majority community in the North because the latter interpreted them as constituting a claim to their territory. He also laid stress upon the need to rid the Constitution of its "sectarian" bias.

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9. In a speech to the Senate in October, Dr FitzGerald said that it was a "tragic fallacy" to treat the Constitution as sacrosanct until the Ulster Unionists were at the negotiating table (Mr Haughey's thesis). This implied "the extraordinary illusion that the Unionists and Loyalists of Northern Ireland are really as eager as we are for Irish Unity", and Dr FitzGerald asked why Articles 2 and 3 could not be recast as an aspiration to unity.

10. In the heated debate which followed, Mr Haughey pursued the orthodox Fianna Fail line, defending Articles 2 and 3 and the idea behind them, as he saw it, that "this island should be one political unit". When Mr Haughey returned as Taoiseach in March 1982, he signalled that his Government would revert to the more traditional nationalist policies from which his previous administration had deviated in 1980/81. He spoke of bringing "closer the day when the rights of self determination of all the people of Ireland will again be exercised in common" - language which was taken by many to imply the abandonment of unity only by consent. He looked forward to "the final withdrawal of the British military and political presence". He blamed Britain for partition, declined to initiate changes in the South's Constitution and, in an interview with the IRISH TIMES, characterised the outgoing Coalition Government's Northern policy as "national sabotage".

11. Dr FitzGerald told the Fine Gael Annual Conference in October 1982 that the initiative to review the Constitution would be revived if he was returned to power. However, he also promised the Pro-Life Amendment Campaign that he would seek to introduce a change in the Constitution, to underpin the existing legal ban on abortion. When Dr FitzGerald's Coalition Government came to power in December 1982 it accepted the Fianna Fail wording of the proposed amendment. The Constitutional Crusade slipped into the background. A national debate ensued on the issue of the amendment and Dr FitzGerald shifted his position to oppose it. But the Bill passed the Dail and the referendum was held in September 1983. It resulted in a 2:1 majority in favour of a change in the Constitution. In these impropitious circumstances (and at a difficult time for the economy) the Government has not so far shown any signs of wishing to revive the Crusade. The Irish electorate is in any case fed up with elections and referenda and unlikely to turn out to vote for an issue which seems to them academic.

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ANNEX B

POLICING: DEVELOPMENTS IN DR FITZGERALD'S POSITION

1. In his book "Towards a New Ireland" published in 1972, Dr FitzGerald referred only very briefly to possible policing arrangements within the two parts of the new all-Ireland federal state which he envisaged. He noted that there could either be separate police forces within each "region" or a "mixed federal force" could be set up to operate throughout Ireland. Either way,

"the body responsible for maintaining peace and order in sensitive areas in Northern Ireland should be of mixed composition, so far as the two communities there are concerned, and under impartial control".

2. In November 1973 Dr FitzGerald (then Irish Foreign Minister) handed HMG a paper on "Policing, Common Law Enforcement and related matters" which formed the basis of the Irish Government's (and the SDLP's) position on these issues at Sunningdale. The paper proposed that the Council of Ireland should have some responsibility for policing throughout Ireland, in particular in the following respects:

- i. a Police Authority would be established in the Republic, the two police authorities north and south would each be responsible for their own forces, but both would be responsible to the Council of Ireland;
- ii. the Council would set up a complaints procedure for both forces, including a special "police ombudsman" whose recommendations would be implemented by the administrations north and south;
- iii. the Council would arrange for "institutional co-operation" between the two forces.

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The paper also suggested that special courts should be established to try specified offences, with judges drawn from both jurisdictions. (The details of this proposal were very unclear.) Finally, it was suggested that the human rights specified in the European Convention should be incorporated into the domestic law of both jurisdictions in Ireland.

3. In discussion at the Sunningdale Conference Mr Cooney (as Justice Minister) spoke for the Irish on this subject and made clear that it was their view that if the Police Authority for the North was appointed by, and responsible to the Council of Ireland, this would very significantly help the minority community in the North to identify with the police. The precise formulation of the reference to the Police Authority was one of the major sticking points in the agreement: eventually it was resolved that appointments would be made to the Authority by HMG "after consultation with the Northern Ireland Executive". The suggestion that the Council should sponsor the police complaints procedure was not proceeded with, while the issue of police co-operation (together with that of "developing community identification with and support for the police services") was remitted to the separate Police Authorities to pursue under the aegis of the Council. (The Irish did not in fact establish a Police Authority for the Republic. Although a commitment to do so figures in the Fine Gael manifesto on which the party regained office in 1982, action has not yet been taken on this.)*

4. In February 1979 Dr FitzGerald introduced a new Fine Gael policy document entitled "Ireland - Our Future together". This scarcely touched on the policing issue, apart from mentioning that in the context of "a political association of the two parts of Ireland" it would be possible to envisage a police force which could operate freely in both parts.

* The courts issue was remitted to a Law Enforcement Commission which reported in May 1974

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5. Dr FitzGerald's wide-ranging Dimbleby Lecture in May 1981 included the point that progress towards a permanent and peaceful settlement in Ireland might most acceptably come through movement towards "an all-Ireland judicial and policing system". However, he alluded to the very difficult questions of principle and detail which such a system would raise only in order to dismiss them:

"Surely we could put aside our differences and come together, under whatever umbrella of authority may be most effective for this purpose, whether Anglo-Irish, or North-South, in order to face an all-Ireland terrorist movement with an all-Ireland judicial and policing system. No obstacles of constitutional theory or political prejudice in either North or South should stand in the way of such a potentially effective step towards restoring peace in the island".

6. Finally, in a speech in November 1982, during the last Irish election campaign, Dr FitzGerald referred again to the proposal for an all-Ireland police force:

"... the joint resolve of our two societies (to end terrorism) can best be harnessed through the operation of a court and a police force dealing with crimes of violence - additional to the existing police forces, North and South - a court and police force that would be common to both Northern Ireland and this state. Such a joint court and police force, under North-South control, would match the subversives' capacity to create a single entity of terrorism ..."

It is hard to see how this new joint force could operate save as a "federal" force under a new all-Ireland political dispensation, although Dr FitzGerald does not spell this out. In response to subsequent attacks from Mr Haughey (who claimed that Dr FitzGerald's proposal would mean RUC men turning up on the doorstep in Kerry), the Fine Gael leader stressed that "the RUC has no place in our proposal."

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7. If a message can be drawn from this brief review, it may be that although Dr FitzGerald now lays less stress on the need for joint policing to flow from some sort of all-Ireland arrangement, his proposals seem in practice still to carry that implication. There is no evidence that he has given any detailed thought to the practical workings of a joint policing scheme which was not accompanied by a major constitutional reorganisation.

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ANNEX C

JOINT ARRANGEMENTS FOR LAW AND ORDER

1. The scope for Irish involvement in the work of police and courts in Northern Ireland needs to be considered against the following broad principles:

a. It is a prime British interest to have effective security co-operation with the Republic. Practical arrangements which involve the Garda and Irish courts in working with the Northern Ireland authorities against terrorism would be welcome;

b. active support by the minority community and the SDLP for the security forces in Northern Ireland could destroy much of the base for terrorism. It would be a prize worth striving for but not at the cost of concessions which brought the majority community on to the streets in violent opposition;

c. law enforcement is of such fundamental importance to Northern Ireland that it would be dangerous to compromise its effectiveness by over-complex structures for command and control;

d. the functions of police and the courts are at the core of sovereignty. Help from Irish personnel under the command of the Chief Constable of the RUC, within the structure of the Northern Ireland court system and enforcing United Kingdom law, could be justified: arrangements which effectively handed law enforcement in certain areas or communities over to the Republic would be different in principle and would risk a severe Unionist back lash;

e. the principle of reciprocity would be important, even if the actual need for RUC activity in the South need not be extensive. Otherwise the arrangements would be perceived as one-sided politically.

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2. There are a range of possible arrangements providing opportunities for a Garda presence in Northern Ireland. First, Liaison Officers would be inoffensive, even useful, possibly at divisional or sub-divisional level, as well as at Headquarters. The greatest need would be in areas close to the border. It would be natural for a Garda liaison officer in the North to wear Garda uniform and remain answerable to the Garda command structure, provided he had no operational responsibility in Northern Ireland. Second, the United Kingdom has long pressed for greater co-operation between the RUC and the Garda in criminal investigation, including facilities for RUC officers to question suspects in the Republic. A joint "regional crime squad", comprising officers from both the RUC and the Garda working together as a team and able to operate on either side of the border, would be welcome. Such operational involvement would require a command structure making "foreign" policemen subject to directions from the Chief Constable of the host territory. Third, a few Garda might be involved in such activities as community relations, traffic control, and perhaps routine station duties. Finally, more difficult but possible, would be to attach a few Garda to the Divisional Mobile Support Units (DMSUs) which conduct a wide-range of police duties, chiefly in border areas and which are primarily directed against terrorism. This could pose problems about the availability of intelligence and it might be natural to start with the simpler arrangements, with involvement in DMSUs as a possible later development.

3. Limited arrangements of this kind could provide scope for the involvement of several dozen Garda in Northern Ireland in ways which would be either beneficial or neutral to British interests. It must however, be open to doubt whether they would hold many attractions for the Republic or the SDLP. It is hard to believe that the appearance of a few Garda uniforms on the streets of Belfast would be enough to impart an Irish identity to law enforcement in Catholic areas, unless it were accompanied by Irish involvement in command and policy. Indeed the problems encountered by the RUC in Catholic areas are more a consequence of IRA intimidation, coupled with the minority's perception of the RUC as symbolising the Northern Ireland state, than hostility to the individual RUC policemen. If the new arrangements were perceived as a few Garda helping the British to sustain partition, the minority community might be unimpressed and both the IRA and the UVF might single them out for attack. (The IRA already give priority to murdering Catholic police, prison officers, etc).

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4. Irish talk of a joint police authority suggests that they have in mind an arrangement which would involve control over police operations. In the United Kingdom, police authorities have no responsibility for police operations which are the concern of the Chief Constable. Any arrangement which might interfere with that responsibility would be fiercely resisted by the police, regardless of whether the new political control came from the United Kingdom or the Republic.

5. It would be possible to invent Anglo-Irish arrangements at the highest level of policing, such as formal meetings between the Secretary of State and the Minister of Justice, attendance from the Republic at some of the Secretary of State's regular Security Policy Meetings, announcement of a common security area or, conceivably, a police complaints system with an all-Ireland flavour. But to go further than liaison and cosmetics could lead to complications, even absurdities, in the area of command and responsibilities, as well as smacking of joint sovereignty. Moreover, if the Irish and the SDLP could only satisfy their political requirements by presenting such arrangements as joint sovereignty, or even progress towards joint sovereignty, that in itself would condemn them in Unionist eyes.

6. Common judicial arrangements would be even more difficult to justify on practical grounds. There is logic in arrangements to deal with the situation where the offender is in one jurisdiction and the offence and the witnesses are in another. But to import Irish judges to deal with crimes and criminals which have no such Southern connection could hardly be justified on this basis. There is an obvious difficulty in associating members of an external jurisdiction with a task as fundamental to sovereignty as enforcement of the criminal law and problems could arise over the judicial oath. Moreover, Republican criticism of Northern Ireland justice is directed at the system rather than the judges, who are widely respected. While there is no reason to suspect that an Irish judge would be weak in dealing with terrorists, he might have difficulty in administering United Kingdom law when his training has been in Irish law. In theory single judge courts could be replaced by three-judge

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courts with one judge from the South; or the judge could be assisted by two assessors, one of whom came from the South. The first measure would double the Northern Ireland requirement for judges; while the Lord Chief Justice is believed to be strongly opposed both to three-judge courts and to assessors. Even with reciprocal arrangements, it would not be easy to argue that a role for the Republic in judicial arrangements in the North did not impinge upon sovereignty.

7. An important reservation about all the possibilities discussed within this Annex is that neither the police nor the judiciary have been consulted. The Lord Chief Justice and the Chief Constable would be likely to resist moves which they saw as undermining their independence and professionalism for political reasons; and their attitude in itself could have an important influence on public opinion.

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