



Mr. Powell

Prime Minister 57
You should be aware that this meeting is planned.

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There was not a chance to consider the

From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

position paper at your meeting this 31 October 1984

Ref. A084/2912

afternoon (it was not ready). If you have time, you might glance at the underlined passages.

Dear Len,

Anglo-Irish Relations: Northern Ireland

After the Prime Minister's meeting this afternoon, it was agreed that the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland should meet tomorrow afternoon at 2.30 pm in your Secretary of State's room to consider:

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- (1) the "position paper" which will be the basis of the next round of Armstrong-Nally talks this weekend;
- (2) a possible paragraph on Northern Ireland for a communiqué from the next Anglo-Irish Summit.

I attach copies of the position paper and of the suggested draft paragraph herewith.

I am sending copies of this letter and the enclosures to Graham Sandiford; and, for information, to Charles Powell.

Yours ever

Robert Armstrong

L V Appleyard Esq

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NORTHERN IRELAND: POSITION PAPER

The agreed purpose of the current confidential discussions between British and Irish officials is to see whether it is possible hypothetically to identify a package of measures on which both sides might agree as a means of promoting security and stability in Northern Ireland and, as a necessary element in that process, helping to strengthen the confidence of the minority community in the forces of law and order and in the political institutions of the Province.

2. It is accepted by both sides that the discussions are exploratory, and are being conducted without commitment; and that any package of measures which may be identified will be for consideration by the two Governments, each of which will have to make its own judgment on whether and, if so, on the extent to which the package may be acceptable.

3. It is also accepted by both sides that any package of measures which might be agreed upon should be transparent, in the sense that it should contain no hidden provisions and no features which might generate suspicions on either side of the border that there were hidden provisions; and durable, in the sense that it would be seen as lasting and not as paving the way for the unification of Ireland.

4. The Irish side, for its part, has stressed that the package must also be adequate to reverse what it sees as the alienation of the minority community in the North.

5. The starting point for the discussions has been that the package might be built on two central and reciprocal

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elements: on the one hand, action by the Irish Government formally to waive the territorial claim on Northern Ireland which is embodied in the present Irish Constitution and, on the other, action by the British Government to accord the Irish Government a right to participate, on a systematic and institutionalised basis, in the consideration by the British Government of policy on security and other matters affecting the interests of the minority community in Northern Ireland.

6. As the Prime Minister made clear in her conversation with the Taoiseach on 3 September, any question of joint authority is excluded: what might be envisaged is a formal obligation on the British Government to consult and a right for the Irish Government to be consulted. The Irish side, while recognising that joint authority is not acceptable to the British Government, and that the ultimate power of decision on all matters pertaining to the government of Northern Ireland would continue to lie with the British Government, believes that any arrangements for involving the Irish Government in the affairs of the Province must be such as to give it an effective say in security policy and other areas of policy affecting the minority; and would like to find a more positive alternative than "consultation" as a description of those arrangements.

Irish territorial claim

7. The Irish Government would propose to implement its hypothetical undertaking to waive the Republic's territorial claims by means of a referendum to repeal Articles 2 and 3 of the present Irish Constitution and to replace these two articles with wording which would: substitute an aspiration

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to unity for the present territorial claim; make it clear that violence in pursuit of that aspiration was absolutely abjured; and emphasise that the aspiration could not be realised without the consent of the majority of the people of Northern Ireland.

Consultative arrangements

8. There is agreement that any right of consultation would not apply to external defence, foreign affairs or finance, which would continue to be the sole responsibility of the British Government. Similarly the right of consultation would not apply to matters devolved to a Northern Ireland Assembly or Executive. In addition to security (which is treated separately - see paragraphs 10-12 below), the right of consultation would in principle apply to all areas of government and administration which do not fall into either of the two foregoing categories (defence, foreign affairs and finance on the one hand; devolved matters on the other) and which fall within the executive responsibility of the Secretary of State for Northern Ireland. Examples advanced by the Irish side to which the right of consultation should apply include nominations to public bodies and institutions and to any bodies set up to give effect to these arrangements; nominations to a devolved Executive, should one be established; issues affecting the identity of the two communities in Northern Ireland (flags and emblems, the use of the Irish language etc); and broadcasting, posts and communications.

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9. Both sides accept that the process by which the Irish Government participated in consideration of matters falling within the arrangements envisaged would be within the framework of the existing Anglo-Irish Intergovernmental Council (AIIC). But there is an important divergence of view about the institutional machinery to be created for the purpose. The Irish side would wish to see a Ministerial Commission for Northern Ireland, comprising the Secretary of State for Northern Ireland and a member of the Irish Government; and see this Commission as having overall responsibility for considering all the areas of policy envisaged, including

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~~on~~ security. The British side would not wish to see the establishment of a Ministerial Commission, on the grounds that it would give an unacceptable impression of equality of responsibility pointing towards joint authority. The British side accepts however that the Government of the Republic ^{would} ~~might~~ appoint a resident representative in Northern Ireland (who could be of Ministerial rank) and with whom the Secretary of State for Northern Ireland, and any officials acting on his behalf or subject to his direction, would consult on relevant matters. A liaison unit would be established at Stormont to monitor, coordinate and encourage contacts with the Irish representative and to act as a channel for communication with him. He would however be free to contact Northern Ireland Office Ministers or departments on his own initiative. The British side has stressed that executive responsibility on matters which might be the subject of consultation would remain with the Secretary of State for Northern Ireland, as would the ultimate right of decision in each case; ^{and it has not excluded} ~~but it has agreed to consider~~ the possibility of the two governments accepting a formal obligation "to seek agreement" on all issues which might become subjects for the consultative process.

and would have supporting staff

No

Security

10. It is agreed that there could be a Joint Security

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Commisson (JSC) comprising the Secretary of State for Northern Ireland and an Irish Minister, assisted as necessary by advisers who would include the Chief Constable of Northern Ireland and the Commissioner of the Garda Siochana. It is also agreed that the Joint Security Commission should have no operational responsibilities: responsibility for police operations would remain with the heads of the respective police forces.

11. Thereafter, views diverge: the Irish side see the Ministerial component in the Joint Security Commission as comprising their proposed Ministerial Commission for Northern Ireland (ie the Secretary of State for Northern Ireland plus the Irish Minister resident in Northern Ireland) and the JSC itself as having a consultative role in the establishment of security policy guidelines, including operational guiedelines for the security forces and the prison services in Northern Ireland, in the appointment of the principal officers of the police force and the prison service in Northern Ireland, and the recruitment and training of police and prison officers, in relation to complaints against the security forces, and in the appointment of members of Boards of Visitors - including Catholics - for the prisons in Northern Ireland. The British side, while accepting that the JSC would be within the framework of the AIIC, see its Ministerial component as comprising the Secretary of State for Northern Ireland and the Irish Minister for Justice

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(who is responsible in the Republic for law and order) and its primary function as being to improve security cooperation between the two sides in the fight against terrorism. The British side suggests that the ^{JSC,} initial work programme should cover such matters as the exchange of intelligence, technical cooperation (in training, forensic matters and the control of explosives), the exchange of personnel, joint inspection arrangements, the planning of joint operations, the establishment and operation of joint units, and the development of a programme of action designed to affirm the position of the police as an accepted part of the whole community. (This work programme overlaps to some extent with the propositions put forward by the Irish side and requires further discussion.) The Irish side see the functions of the ^{JSC} ~~Joint Security Commission~~ as limited to Northern Ireland; the British side, while accepting that measures discussed in the JSC would relate primarily to Northern Ireland, believes that the ^{possibility of applying} ~~applicability~~ of such measures ⁱⁿ ~~to~~ the Republic should not be excluded.

12. The Irish side accepts the desirability of establishing a joint body to promote security cooperation (as advocated by the British side, but would prefer such a body to be separate from the proposed Joint Security Commission. But

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They:
have made no ~~detailed~~ proposals as to the membership and function of the separate body, or its relationship to the JSC; and this idea remains to be explored.

Practical Policy ^{ing} Measures

13. Both sides accept that (a) the operational effectiveness of ^{policing arrangements in the Province} ~~the Royal Ulster Constabulary~~ should not be impaired; and (b) measures are in principle needed to help the minority community to identify and support the police to a greater extent than at present. The British side has proposed a number of practical measures designed to improve the recruitment of Catholics into the RUC and improve relations between the RUC and local communities. While welcoming these proposals, the Irish side is strongly of the view that they do not go far enough, and that early and visible measures, ^{including} ~~involving at a~~ ~~minimum~~ some restructuring of the RUC, are needed in order to attract support from the minority community. The Irish want to see predominantly Catholic areas policed by Catholic policemen and have pressed for the establishment of locally based police forces ^{Northern Ireland} ~~in these areas~~. In response to British objections, the Irish have asked whether arrangements of this kind might be introduced on a temporary basis - e.g. for a specified period of 5 years - with the avowed purpose of restoring minority confidence

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in the police force. A suggestion from the British side to establish joint regional crime squads which could be employed in either jurisdiction ^{has not found favour with} ~~is not acceptable to~~ the Irish side as part of the initial package; but the Irish do not exclude such a development in the longer term, nor would they object to it as a possible subject for study by the proposed Joint Security Commission.

14. In general, it is accepted by both sides that *practical* policing arrangements would be one of the key areas in any package but that further discussion, involving experts on both sides, is needed in order to establish whether mutually acceptable arrangements could be worked out.

Mixed Law Courts

15. It is agreed that it would be an important contribution towards promoting confidence in the judicial system if judges from one jurisdiction could be associated with criminal, and particularly terrorist, trials in the other. To this end, the Irish side has suggested that persons tried in Northern Ireland for terrorist crimes might be tried by a panel of three judges, one of whom would be from the Republic; and that trials for such crimes in the Republic would be by a similar panel of three judges including one from Northern Ireland. The British side has accepted this proposal as a basis for discussion and a number of ^{implications} ~~detailed possibilities~~ ^{tentatively} have been explored.

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Both sides agree that these ideas are worth following up but that detailed proposals cannot be formulated without the advice and agreement of the judiciaries of both jurisdictions.

All-Ireland Law Commission

16. The British side has suggested the establishment of an All-Ireland Law Commission to examine whether there are areas of the criminal law, applying respectively in Northern Ireland and the Republic, which could be harmonised with advantage to both countries. The British proposals envisage that the ^{Commission's} first task would be to define the areas to which harmonisation would apply and thereafter to agree on joint machinery for studying those areas and putting forward recommendations for reform. The Irish side has welcomed the British suggestions as a basis for further discussion.

An Anglo/Irish Parliamentary Body

17. The Irish side believes that a joint Parliamentary body of the kind adumbrated in the Anglo/Irish Joint Studies Report of November 1981 could be a useful element in any package. The British side believes that any such body should evolve pragmatically from the existing

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Anglo/Irish Parliamentary Group. There has been no detailed discussion of the possibilities; but the Irish side ^s have expressed general agreement with the idea ^{that a} start could be made by enhancing the role of the existing Group, ~~by~~ making provision for more regular meetings and giving it a higher profile as a consultative body; ^{that,} It could receive reports from each government on the progress of Anglo/Irish relations; ^{that it could} and itself make recommendations to the two governments or the two sovereign Parliaments which, together with the Northern Ireland Assembly, would then be free to debate them or let them lie.

Bill of Rights

18. The Irish side wishes to see the enactment of a Bill of Rights for Northern Ireland and believes that this would be of significant symbolic and political value in securing the support of the minority community and the SDLP for any package of agreed measures. The Irish have drawn attention to the fact that all the unionist ~~unionist~~ ^{and the SDLP} parties in Northern Ireland now favour such a proposal; and suggest that the most practical way to proceed would be to incorporate the European Convention of Human Rights into Northern Ireland law. They have indicated that parallel action by the Republic to incorporate the Convention into

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domestic law in the South would not be excluded.

The British side has taken note of the Irish proposal, while drawing attention to the practical difficulties including the implications for the rest of the UK.

Devolution

19. Both sides are agreed that

it would be desirable to introduce a system of devolved government into Northern Ireland based on an elected Assembly and Executive. The Irish side believes that the SDLP and the minority community would expect this to be done on a power-sharing basis; but the Irish recognise that the Unionists would be fiercely opposed to this and would be most unlikely to participate in power-sharing arrangements. The British side has pointed out that

devolved government cannot be established without the cooperation of the Northern Ireland political parties; and that involving the Republic in the affairs of the Province on ^{proposed} the basis would intensify the hostility of the Unionists to any form of power-sharing.

The Irish side has suggested that unionist

objections might be overcome if the functions of Chief Executive in a devolved ^{in which both communities were represented} government ^{were to be} /exercised

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exercised by the Secretary of State for Northern Ireland, ^{or by another Minister} who would thus provide a visible assurance of continuing United Kingdom control over the government of the Province. The British side has expressed serious reservations about this proposal, which however remains on the table for further study.

Legal basis for any accord between the two countries

20. The British side has made it clear that detailed discussion of this question would be premature. It has been assumed for purposes of the discussion, however, that the measures agreed on would be spelt out in a formal agreement between the two governments (which for historical reasons the Irish side would not want described as a treaty), which could incorporate a statement of objectives and would provide for the establishment and implementation of the measures agreed on. ^{The} /agreement would have to be ratified by both Parliaments and registered with the United Nations; and it would enter into force only after Articles 2 and 3 of the Irish Constitution had been amended following a referendum.

Timing

21. The Irish side believes that it is of great importance that any arrangements agreed between the two governments should be in place in time for the local ^{SECRET AND PERSONAL} /elections

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elections in Northern Ireland in May 1985. The
British side has declined to be committed to
any timetable.

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DRAFT COMMUNIQUE ON NORTHERN IRELAND

The Prime Minister and the Taoiseach agreed that it was a major United Kingdom and Irish interest that there should be peace and stability in Northern Ireland. In the context of this common interest they further agreed that:

- (i) There can be no change in the constitutional status of Northern Ireland as part of the United Kingdom without the consent of the majority of its people.
- (ii) Any attempt to promote political objectives by means of violence or the threat of violence must be rejected, as must those who adopt or support such methods.
- (iii) The traditions of both the majority and the minority communities in Northern Ireland should be respected, and both communities should be entitled to give those traditions appropriate public, political and social expression.

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- (iv) The institutions of government in Northern Ireland should be such as to provide both communities with the confidence that their rights will be safeguarded and their aspirations respected.

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