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Advice please.

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

Sir Robert Armstrong GCB CVO

Ref. A085/587

SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

Anglo-Irish Relations: Northern Ireland

I had a further meeting with Mr Nally at Barretstown Castle, County Kildare, on Tuesday 19 February 1985. I was accompanied by Mr Goodall (FCO), Mr Brennan (NIO) and Sir Alan Goodison; Mr Nally was accompanied by Mr Donlon and Mr Lillis (DFA), Mr Andrew Ward (Ministry of Justice) and Mr Noel Dorr.

2. On the text of the proposal for institutionalised intergovernmental consultation, we made it clear that our mission was exploratory. Our discussions with Ministers had indicated areas in which we should need to look for further changes, and we wanted to explore possibilities with them, but had no textual suggestions to make. They for their part made it clear that they had no authority to negotiate any changes in the Irish text given to us on 8 February, which had been approved in detail by the Irish Government.

3. We had some discussion of the possible shape of an Irish quid pro quo on the constitutional status of Northern Ireland. The Irish representatives repeated that the proposals we had been discussing with them, even in their Irish form, would not be thought to be sufficiently far reaching to justify their going for a referendum to amend the constitution. I formed the impression

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that, while the Taoiseach still saw merit in amending the constitution, he was not likely to carry his colleagues in Government with him. //

4. I said that British Ministers regarded it as for the Irish Government to decide whether to go for a referendum to amend the constitution. They could understand the difficulties for the Irish Government. On the other hand the Unionist interventions in the recent conference in the United States had shown that the provisions of the Irish constitution were a stumbling block to the Unionists and that an amendment to the constitution would have very considerable symbolic significance for them, and thus real value in inducing them to accept a measure of intergovernmental consultation on the affairs of Northern Ireland. If the constitution was not to be amended, British Ministers would be looking for as strong a commitment as possible by the Irish Government, entrenched as far as possible, and incorporating if possible words resembling those of the British Government's and Parliament's own guarantee. We pressed the Irish representatives to give us more detail about their ideas, but did not get much further than a strengthened repetition of the Sunningdale formula, entrenched in a formal intergovernmental agreement. The sort of possibility they had in mind, which Irish Ministers had already considered, and which they were advised would withstand challenge in the Supreme Court, would be to incorporate into an international agreement registrable at the United Nations a formal declaration in the terms used by Mr Cosgrave in the Dail in March 1974 when he said:

Is this enough?

"I now therefore solemnly reaffirm that the factual position of Northern Ireland within the United Kingdom cannot be changed except by a decision of a majority of the people of Northern Ireland. This declaration, I believe, is in accordance with and follows from the resolve of all democratic parties in the Republic that the unity of Ireland is to be achieved only by peaceful means and by consent".

5. The Irish representatives made it clear that the Irish Government would like to see early progress on all these matters: their preference would still be to reach conclusions and an agreement in time for the local government elections in Northern Ireland. We made it clear that we did not believe that it would be possible to complete the process in that timescale, and that in any case it might be preferable, for the local elections, to be travelling hopefully. The Irish representatives made it clear that the Irish Government did not want to rush the British Government, and would go along with a longer timescale, aimed at announcing an agreement in, say, June; but they said that it would be necessary to consider carefully how to convey the message of travelling hopefully.

6. On the text itself, we indicated the three main areas in which there could be difficulties for British Ministers:

- (1) They would want the text to make it clear that, even though there might be intergovernmental discussions through the proposed machinery on the modalities of devolution, that subject would be for discussion first and foremost with and among the constitutional parties in Northern Ireland.
- (2) The Irish reordering of the text gave too much prominence to economic and social matters.
- (3) They remained anxious about the extent of the commitment to discuss economic and social matters in Northern Ireland with the Irish Government (paragraph 14 of the Irish text of 8 February), both because of the political impact on the Unionists and because of the practical problems for the Secretary of State in administering Northern Ireland.

7. Our discussion suggested that there should be no problem with the Irish Government on the first point.

8. On the second point, the Irish representatives indicated, without commitment, that, provided that there was a separate heading for economic and social matters in paragraph 1 of the text, the order in which the four volets in that paragraph were placed, and in which the subjects were dealt with in the paper, would not be a sticking point for the Irish Government.

9. On the third point, it was clear that it remained very important for the Irish Government that there should be provision for consultation on economic and social matters in Northern Ireland where there was risk of disadvantage for or discrimination against the minority. Without some such provision the agreement would be too strongly dominated by security to be acceptable to nationalist opinion. At the same time they recognised the problem for us with Unionist opinion; and they accepted the need to keep the process of consultation within practical bounds, though they thought that in practice it would inescapably be so limited, because there would not be time or resources to do otherwise.

10. I now attach a revised text, with definite drafting proposals on these three matters, for Ministers to consider.

11. The first point - the primacy of local consultations on devolution - has been met by a new first sentence in paragraph 7. That should be acceptable to the Irish Government.

12. The second point has been met by reordering the paper so as to bring all aspects of security up to second place, after political matters, and relegating economic and social matters to last place.

13. For dealing with the last point we offer alternatives: either

- (a) limiting the special and separate provision for consultation on economic and social matters in paragraph 22 to cross-border co-operation, and expanding paragraph 9, under

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political matters ("measures to recognise and accommodate national identity, to protect human rights and to prevent discrimination"), to allow the Co-ordinating Committee to address itself to "questions within the responsibility of the Secretary of State concerning the political, economic, social and cultural status of the minority in Northern Ireland"; or

- (b) keeping in paragraph 22, in addition to the provision for consultation on cross-border aspects of economic and social matters, provision for the Irish Government to "put forward views and proposals which bear on what both Governments recognise to be the fundamental interests of the minority community in policy aspects of economic and social matters which are susceptible of devolution and in relation to which the Secretary of State continues to exercise responsibility".

14. There is little or no real difference between these two formulations: indeed, the second (b) is arguably more limited than the first. Both are limited to matters within the responsibility of the Secretary of State; the first would admit for consultation "questions concerning the ... economic [and] social ... status" of the minority, while the second would admit only "views and proposals which bear on the fundamental interests of the minority community in policy aspects of economic and social matters". Moreover the second formulation would come into effect only if and when devolution had been tried and failed, or if and when it was decided to abandon the attempt to achieve a measure of devolution.

15. Presentationally the first formulation goes further to meet the wish of British Ministers to make the profile of economic and social matters as low as possible in the paper; the second formulation is more likely to appeal to Irish Ministers because the profile given to economic and social matters seems to be higher, and it adopts drafting suggested by the Irish Government.

16. Ministers will wish to choose which formulation we should adopt in the next text that we put to the Irish representatives. On balance I favour the second formulation, because it seems to me to give more of presentation (but nothing of substance) to the Irish, and would thus strengthen our hand when it came - as I dare say it will come - to pressing the Irish to go further than they want to go towards guaranteeing the existing constitutional status of Northern Ireland.

17. The Irish explained that they would see any intergovernmental agreement which might emerge from the present text as being accompanied by "confidence building measures" - ie by measures which each Government would take unilaterally, but which would be intended, on the British side, to demonstrate to the nationalist minority that the new arrangements would have a tangible impact for the better on their situation and, on the Irish side, to reassure the Unionists.

18. One such measure would clearly be whatever the Irish Government were prepared to do to enhance the constitutional status of Northern Ireland: a subject discussed in paragraphs 3 and 4 above.

19. Also in the context of confidence building on the Irish side, Mr Ward (the Secretary of the Irish Department of Justice) volunteered that it would be possible to redeploy to the border areas elements of the (armed) Garda task force whose withdrawal to the Dublin area had created an erroneous impression in the North that fewer Irish resources were being directed against terrorism in the border areas.

20. As regards confidence building measures on the British side, the Irish expressed the hope that these might include a review of prison sentences, with a view to returning to civil life as many of those held as could properly be released. They reluctantly recognised that there could be no question of changing the

structure of the RUC or of disbanding the UDR; but they pressed us to consider various ways of associating the police in nationalist areas more closely with the local community (for instance, by using members of the local community as a kind of "neighbourhood watch" on ordinary (ie non-terrorist) crime); and they argued strongly for some modification in the role and deployment of the UDR, which they continue to believe is particularly resented by the nationalists in its present form as an overwhelmingly Protestant force reminiscent of the old B Specials. We gave an outline (which the Irish welcomed) of measures already under consideration to improve relations between the police and the community; and undertook to reflect further on their other suggestions.

21. I am sending a copy of this note and the annex to the Secretary of State for Northern Ireland.

Robert Armstrong

26 February 1985

Draft of 25 February 1985

British Proposal of March

1. There would be established within the framework of the Anglo-Irish Intergovernmental Council a Co-ordinating Committee to deal on a regular basis and in relation to Northern Ireland with:

- a. political matters, including human rights questions;
- b. security and related matters;
- c. The Courts and certain legal matters;
- d. [cross-border co-operation in] economic and social matters;

[Other topics might be added by agreement.]

2. Unlike the existing AIIC machinery this Committee would be primarily concerned with

North/South rather than East/West relationships and would meet on a regular rather than an ad hoc basis. The British Government would accept that the Irish Government would put forward views and proposals on matters relating to Northern Ireland within the body's remit. Both Governments would accept that, in the interest of promoting peace and stability, every effort would be made through the Co-ordinating Committee to resolve any differences rather than simply reporting them to the two Governments. Attention at the highest level would thus be given to the matters in question but there would be no derogation of sovereignty on the part of either the United Kingdom or the Republic. The focus of the Committee's work would be mainly in Northern Ireland; but some of the matters under consideration would involve co-operative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland might also be found to have an application by the Irish authorities in the Republic.

3. The Co-ordinating Committee would meet at Ministerial or official level, as required. There would be regular and frequent Ministerial meetings;

and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Committees. Membership would be small and flexible. There would be a small joint secretariat. The Irish Government would maintain an office in Belfast for the purpose of these arrangements. When the Co-ordinating Committee met at Ministerial level the Secretary of State for Northern Ireland and an Irish Minister designated as the Permanent Irish Ministerial Representative would be joint Chairmen. Other British and Irish Ministers could attend meetings as appropriate: thus when it met in its legal mode the Attorneys General might attend. Ministers would be accompanied by their officials and professional advisers: for example, when questions of security policy or security co-operation were being addressed they could be accompanied by the Chief Constable of the Royal Ulster Constabulary and the Commissioner of the Garda Siochana.

4. The purpose of the Co-ordinating Committee, in relation to matters coming within its remit, would be to constitute a framework within which the Government of the United Kingdom and the Government of the Republic of Ireland could work together:

(i) for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and

(ii) for peace, stability and prosperity throughout Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation.

5. The Co-ordinating Committee would examine the scope for joint action to promote the social and economic reconstruction and improvement of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, including the possibility of securing wider international support to that end.

6. It is the declared policy of the British Government that responsibility in respect of certain matters within the remit of the Secretary of State for Northern Ireland should be devolved within Northern Ireland on a basis which would

secure widespread acceptance throughout the community. The Irish Government support that policy.

7. Both Governments recognise that devolution can be achieved only with the co-operation of the constitutional representatives within Northern Ireland of both the traditions there. Nonetheless if full devolution had not taken place, the Co-ordinating Committee would constitute a framework within which the Irish Government could put forward views and proposals on the modalities of devolution in Northern Ireland, particularly in so far as they bore on the interests of the minority communities.

Political Matters, including Human Rights Questions

8. The Co-ordinating Committee would concern itself with measures to recognise and accommodate national identity, to protect human rights and to prevent discrimination. It would be accepted that the focus would be on Northern Ireland, but the possible application of any such measures by the Irish Authorities in the South would not be excluded.

9. [In this mode the co-ordinating Committee would be able to address itself to questions within the responsibility of the Secretary of State concerning the political, economic, social and cultural status of the minority in Northern Ireland. Specific measures] [Measures] to be considered in this area in respect of Northern Ireland include the use of the Irish language and changes in electoral arrangements.

10. (The Co-ordinating Committee would consider measures to develop the cultural heritage of both traditions throughout Ireland.)

11. The Co-ordinating Committee would consider the benefits which might be expected from a Bill of Rights for Northern Ireland as well as any difficulties which this might present. If a Bill of Rights were judged to be desirable in Northern Ireland the Committee might also consider whether similar action should be taken in the Republic.

by whom?

12. The Co-ordinating Committee would

[Irish text:

constitute a framework within which the Irish Government could put forward views and proposals on]

[British text:

provide opportunities for the expression of views and proposals by the Irish Government on]

appointments to be made by the Secretary of State for Northern Ireland to the:

Police Authority of Northern Ireland

Police Complaints Board

Fair Employment Agency

Equal Opportunities Commission

Standing Advisory Commission on Human Rights

Security and Related Matters

13. In this mode, the Co-ordinating Committee would consider:

(a) security policy;

(b) relations between the security forces and the Community;

(c) security co-operation;

(d) prisons policy.

(a) Security Policy

14. The Co-ordinating Committee would address the security situation at its regular meetings. This would provide an opportunity to address policy issues, serious incidents and forthcoming events (eg parades and processions).

(b) Relations between the Security Forces and the Community

15. The Co-ordinating Committee would consider relations between the security forces and the Community, with particular reference to the minority community in Northern Ireland. With a view to promoting greater confidence in the security system, a programme of action might be put in hand which would include:

- i. the establishment of local consultative machinery;
- ii. training in community relations;
- iii. crime prevention schemes involving the community;
- iv. improvements in arrangements for handling complaints;
- v. action to increase the proportion of Catholics in the RUC.

It would be accepted by both sides that these measures would be directed primarily towards Northern Ireland, with the object of making the security forces more readily accepted by the nationalist community there, but that some of them might be developed by the Irish authorities in ways which might also have an application in the South.

(c) Security Co-operation

16. The Co-ordinating Committee would have no operational responsibilities; responsibility for police operations would remain with the heads of the respective police forces, and the Chief Constable of the Royal Ulster Constabulary would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister of Justice.

17. With a view to enhancing co-operation between the security forces of the two Governments, the Co-ordinating Committee would set in hand a programme of work to be undertaken by the Chief Constable and the Commissioner and groups of officials in such areas as threat assessments, liaison structures, technical co-operation, training and exchange of personnel, and co-ordination of operational resources.

(d) Prisons Policy

18. The Co-ordinating Committee would also be able to consider policy issues in the prisons.

Individual cases could be raised as appropriate, so

that explanations could be given or inquiries instituted.

The Courts and Certain Legal Matters

19. In this mode, the Co-ordinating Committee would deal with issues of concern to both countries relating to the enforcement of the criminal law.

20. The Co-ordinating Committee [British text: would consider and as appropriate make proposals for the establishment of] [Irish text: would devise the necessary steps to establish] a Joint court comprising three judges for each case for the trial either in the North or in the South of persons accused of terrorist crimes. These judges would be drawn from a panel of judges half of whom would be drawn from each jurisdiction. When sitting in Northern Ireland, one of the three judges would be from the Republic and the Court would exercise its jurisdiction under the law of the United Kingdom. When sitting in the Republic, one of the three judges would be from Northern Ireland and the Court would exercise its jurisdiction under the law of the Republic. The Co-ordinating Committee could also have the competence to examine the

desirability and possibility of devising island-wide judicial and legal institutions which would help to promote peace and stability.

21. The Co-ordinating Committee would examine whether there are areas of the criminal law applying in the North and in the South respectively which might be harmonised with advantage to both. It would also be concerned with the oversight and review of arrangements between North and South for extradition and extra-territorial jurisdiction.

Economic and Social Matters

22. Should it prove impossible to achieve or sustain devolution on a basis which would secure widespread acceptance throughout the community, the Co-ordinating Committee would for the time being constitute [(1) a framework within which the Irish Government could put forward views and proposals which bear on what both Governments recognise to be the fundamental interests of the minority community in policy aspects of economic and social matters which are susceptible of devolution and in relation to which the Secretary of State continued to exercise responsibility, and (2)] a framework for

the promotion of co-operation between North and South in Ireland in relation to cross-border aspects of those matters] [economic and social matters in relation to which the Secretary of State continued to exercise responsibility].

23. It is recognised that, if responsibility were devolved in respect of certain matters under this heading currently within the remit of the Secretary of State, there would need to be machinery for practical co-operation between the responsible authorities North and South in respect of cross-border aspects of those issues.

Interparliamentary relations

24 . Subject to the agreement of the Houses of Parliament at Westminster and of the Oireachtas in Dublin, an Anglo-Irish Parliamentary Body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981 could be established.

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