

Ref. A085/2310

PRIME MINISTER

Anglo-Irish Talks: Northern Ireland

We had a further round of talks with Mr Nally's team in Dublin on 3 September. This minute reports on that session and makes suggestions, as a basis for your meeting with the two Secretaries of State on 12 September, on the line I should take at the next session of talks on 12-13 September.

2. Mr Nally began with some careful but strongly expressed remarks about recent reports in the British press on the Anglo-Irish talks. He said that the Irish Government were disturbed about the appearance of so many reports and in particular that a number had said that the future role of the Irish Government in relation to Northern Ireland would be "consultative". As we knew, the use of this word was, from the Irish point of view, "the kiss of death" for the proposed agreement. Mr Nally also said that recent press reports had said that the British Government had refused to agree to the establishment of mixed courts. This encouraged critics in the Republic of the Anglo-Irish talks who were arguing that the Irish Government would be under-pinning the British security system in Northern Ireland while securing no significant concessions for the minority in the field of public order. Mr Nally said that, if it was true that the British Government would in no circumstances agree to joint courts, the wording in the draft agreement, which in effect agrees that the new Committee should consider the possibility of mixed courts, was simply leading the Taoiseach and his colleagues into a trap. I said that I would report Mr Nally's remarks to British Ministers. It was our policy to avoid the word "consultative",

and we shared the Irish view that it would be greatly preferable for the agreement as a whole to be published on signature rather than for elements in it to leak piecemeal beforehand.

Nevertheless, I believe that we must expect that, when the agreement became public, British Ministers would be asked directly whether they regarded it as essentially consultative; we are considering what forms of words might be used in responding to such questions from the media.

3. Mr Nally also mentioned, in much less emphatic terms, a feeling of concern in Dublin at the change of Northern Ireland Secretary at this stage in the talks. I said that your personal commitment to securing a worthwhile Anglo-Irish agreement had not changed and that the Government would continue to seek such an agreement.

Mixed Courts

4. Mr Nally said that the Irish Government now had two principal concerns in the negotiations - mixed courts and changes concerning the Ulster Defence Regiment (UDR). On mixed courts, the Irish wanted as a minimum an understanding that they would be established within a defined period, say 6 or 12 months. This would be crucial to the Irish decision whether to go ahead with an agreement. In accordance with the decisions taken at your meeting on 30 August, I said that we could go no further than agreeing to consider the possibility of mixed courts in the new Intergovernmental Committee. A "side-agreement" about the future establishment of such courts was not acceptable. I made it clear that the Attorney General would not wish to hold further talks about mixed courts with his Irish opposite number.

5. The Irish said that our position seemed to be contradictory. On the one hand, we were letting it be known publicly that we were not willing to agree to establish mixed courts. On the other hand we were willing to state in the

agreement that the possibility of doing just that could be considered in the Intergovernmental Committee. If the agreement provided for such consideration, but nothing happened as a result, the Irish Government would be attacked for having been outmanoeuvred. The Taoiseach later spoke forcefully on similar lines to Mr Mallaby, who was taken to have a drink with him. Mr Mallaby's account of that conversation is attached at Annex A.

6. I handed over the new language about mixed courts for the agreement, which had been agreed at your meeting on 30 August. I pointed out that it included two new elements: a commitment to consult the two judiciaries about the matter and a commitment to consider other means of promoting public confidence in the administration of justice in Northern Ireland. It was possible that the Committee's consideration of this general area would throw up new ideas, as well as educating all concerned about the many factors involved in mixed courts. The Irish later informed us that our new language did not go far enough to satisfy them. They also said that, since it was well known that the judiciary in Northern Ireland were against mixed courts, provision for consulting them would be treated in the Republic with derision. The Irish also said that our earlier language had been preferable in that it had spoken of seeking means for ensuring public confidence in the administration of justice.

UDR

7. The Irish delegation said repeatedly that the UDR was a major focus of nationalist resentment against the system of law and order in Northern Ireland. The moves concerning the UDR which we had already said we would announce around the time of conclusion of the agreement - principally an increase in the initial training of part-time members of the UDR and the secondment of more non-commissioned officers from the regular army for training purposes - were steps in the right direction. But more was needed. The Irish Government were looking for three things: phasing down of the part-time cadre of the UDR, a

much greater RUC presence alongside the UDR in areas where the UDR operate and a visible reduction in operations in strongly Republican areas - a principle which they pointed out was already being applied in practice in the urban areas of Belfast and Londonderry. The Irish recognised that these things could not be achieved rapidly and at once, but argued that it should be possible to give immediate signs of change. They pressed for members of the RUC to accompany the UDR on its patrols, more particularly at vehicle check-points, much more often than in the past and especially in largely Republican areas. They argued that this could give no offence to unionists; that it need not be specifically announced; and that it would be noticed and taken by the nationalists as a good sign.

8. I said that we had given much thought to this during August. The Irish must understand that, if the UDR was a sensitive matter for nationalists, changes concerning it were equally sensitive for unionists. If too many changes were announced around the time of an Anglo-Irish agreement, the success of the agreement could be jeopardised. Nor could we give private undertakings to the Irish about future changes concerning the UDR, since we must be in a position truthfully to deny that we had made secret promises or side agreements on this or on any other matter. I said that we would continue to keep under review the establishment of the UDR and the deployment of the Regiment and that we had no present intention of increasing its membership or extending its area of deployment. This subject could be discussed with the Irish on a continuing basis in the new Intergovernmental Committee.

9. This provoked some emphatic comments from the Irish delegation. They said that their Ministers had been considering, before you met the Taoiseach in Milan in June, whether they could go ahead with an Anglo-Irish agreement at all. Irish Ministers had been encouraged by your meeting in Milan, partly because of the emergence there of the concept of

"rapid implementation" of the agreement. But we were now refusing to give them any clear idea of the measures we would introduce in rapid implementation of the agreement; and they were left with the impression that such measures as we might be contemplating would be too insignificant to have any beneficial impact on the minority community. This seemed to be contrary to the "spirit of Milan". Mr Nally said that he was wondering in the light of my remarks about the UDR, whether the Anglo-Irish agreement would be concluded after all.

SDLP

10. I informed Mr Nally of the possibility that the new Secretary of State for Northern Ireland would carry out the intention of his predecessor to have a talk with Mr Hume of the SDLP, and to make clear that the Government hoped that the SDLP, in the context of an Anglo-Irish agreement, would give some sign of its willingness to participate again in the political processes in Northern Ireland. I asked the Irish delegation for their assessment of SDLP attitudes. The reply was that the SDLP would go along with an agreement which was presented with a low profile as "progress towards peace and stability". Mr Hume had said on Irish television on 3 September that he did not expect the agreement to produce constitutional change - ie in the form of a direct role for the Republic in Government in Northern Ireland. The Irish delegation were fairly confident (some more than others however) that Mr Seamus Mallon, the Deputy Leader of the SDLP, whose attitude is thought to be more critical than that of Mr Hume, would adopt generally the same approach.

Timing and Location of a Summit

11. I told Mr Nally in strict confidence that the two days in late October which appeared from your diary to be theoretically possible for an Anglo-Irish Summit were 25 or 28 October. Mr Nally thought that 25 October, being a Friday, would be unfavourable from the point of view of the media and that we should set our sights on 28 October. But obviously nothing

could be settled, and dates will require further discussion. On the location of a Summit, I put forward the proposals for a two-part meeting beginning near Shannon Airport and ending at Leeds Castle near Gatwick. Mr Nally said that the strong preference of the Taoiseach was for an arrangement which would not strike the world as particularly out of the ordinary. Contrived arrangements would give the impression that the agreement was a very important event, whereas the interest of the two Governments would be served by presenting it, objectively, as a useful but modest development. The Taoiseach would like the Summit to take place at the Royal Hospital at Kilmainham in Dublin. Helicopters could land there, the place was secure and there were press facilities. The Hospital is a distinguished piece of architecture, built late in the 17th century as Dublin's equivalent of the Royal Hospital, Chelsea. It has many British associations, and the room where signature of the agreement could take place is decorated with portraits of William and Mary among others. The Royal Hospital is now owned by the Irish State and is used for cultural events. Mr Mallaby visited it this week and I attach his report at Annex B.

12. Mr Nally said that the Taoiseach would like the joint press conference after signature of the agreement to consist only of statements by the two Heads of Government, without questions afterwards. The two Heads of Government could say that the agreement spoke for itself and that they wished to reserve further statements until the debates in the two Parliaments a few days later. I said that I thought that you would find it very difficult, and might well be very reluctant, not to answer questions.

13. I gave Mr Nally the material for a Summit communique which was agreed at your meeting on 30 August. He will comment at our next meeting.

[It will look as though you have something to hide]

Assessment

14. At the end of this round of talks my impression is that the Irish Government, and the Taoiseach in particular, are close to reaching a judgment that the advantages of concluding an agreement with us broadly on the lines now negotiated narrowly outweigh the disadvantages from the Irish point of view. But they still see serious political drawbacks in an agreement which their critics are bound to characterise as no more than consultative; and their final judgment is liable to turn on whether they consider that what we are proposing by way of "rapid implementation" will be significant and visible enough to persuade the "green wing" of the SDLP to endorse the agreement. In this connection, the Taoiseach himself attaches particular importance to mixed courts, to which he has a longstanding public commitment; but some of his advisers attach at least equal importance to the UDR. Since we have very little room for manoeuvre on mixed courts, I believe that we should concentrate on the UDR and that a further small move on our part in this area might be enough to clinch the agreement. In paragraph 17 below I suggest one possibility, which we could implement without entering into any secret agreement with the Irish.

Further Instructions

15. The questions on which I should be grateful for instructions before my next round with Mr Nally on 12-13 September are set out, with suggestions below.

16. Mixed Courts. A modified version of our new language for the agreement, which I could try on the Irish ad referendum, is attached at Annex C. But I doubt whether the Irish will compromise on language until they are absolutely convinced that we will not yield at all on the matter of principle. On that, the responsible Departments are preparing a statement of the reasons for our refusal to commit ourselves to mixed courts, which I can draw on when I speak to Mr Nally.



17. UDR The continued Irish pressure on this subject suggests that it is the one where a small move by us could bring the Irish to decide to conclude an agreement. We can neither agree to take early steps which would seriously antagonise unionist opinion nor make secret promises of future action. At the most recent meeting the Irish seemed to be prepared to settle for a higher proportion of UDR operations being undertaken jointly with the RUC. This accords with our existing policy, though the need for careful handling within the RUC and UDR has inhibited its implementation. Following a helpful discussion with the Chief Constable of the RUC, we can assure the Irish that the Catholic population can expect to see more evidence of this policy on the ground, particularly at vehicle check points, by the end of October. We believe that the Irish will regard this as welcome progress.

18. Location of a Summit The Royal Hospital at Kilmainham has strong British associations which are not controversial from the point of view of Irish nationalists. The building is handsome. The Irish are confident that it can be made secure (though there is the problem of helicoptering from the airport to Kilmainham) and that good press arrangements could be laid on. It is clear that Dr FitzGerald is seriously opposed to a two-part Summit; and it cannot be denied that a Summit at a single location would be easier in practical terms. Ministers will wish to consider seriously whether the Royal Hospital at Kilmainham would be acceptable, both on political grounds - can we or the Irish risk this becoming known as the Kilmainham agreement - and on security grounds. If it is not acceptable, and it is thought best to have a single location, I suggest that we should revert to the idea of Hillsborough. The Northern Ireland Office believe that this would be secure; and we should have to try to minimise the risk of demonstrations by keeping the timing and location as secret as possible for as long as possible.

19. Press Conference Dr FitzGerald's idea of a press conference confined to statements by the two Heads of Government is a most unusual one; it has a rather "presidential" ring about it. Mr Ingham thinks that it would be extremely difficult to cut off proceedings after the two statements. It would antagonise the media. ~~It might be possible to go for no press conference at all, on the ground that on a matter of this kind~~ the first statements, other than the text of the agreement, should be to the House of Commons and the Dail. But this would also antagonise the media, and deny you and the Taoiseach the opportunity of giving a lead to the media presentation. The best course therefore seems likely to be a joint press conference by you and the Taoiseach on normal lines, with opening statements and time for questions limited to, say, half an hour.

20. I am sending copies of this minute to the Secretaries of State for Foreign and Commonwealth Affairs and for Northern Ireland.

R

Approved by
ROBERT ARMSTRONG
and typed in his absence

11 September 1985

CABINET OFFICE	
A	7146
6 SEP 1985	
FILING INSTRUCTIONS	
FILE No.	

SECRET AND PERSONAL

B.07107

ANNEX A

SIR ROBERT ARMSTRONG *RA*

cc Mr Andrew
Mr Goodall

Anglo-Irish Talks concerning Northern Ireland

Mr Lillis of the Irish negotiating team took me out to dinner in Dublin on 3 September. After he had picked me up, he said that we would be dropping in at the Taoiseach's flat for a social drink on the way; business was most unlikely to be discussed. We spent over an hour with Dr and Mrs FitzGerald, most of it in conversation about the Anglo-Irish talks.

2. Mr Lillis told the Taoiseach that the United Kingdom team had been able to say little new at the talks on 3 September about mixed courts or rapid implementation measures concerning the UDR. We had done some good work on a passage reflecting the Chequers communique for inclusion in an RUC Code of Conduct. I explained why we had not gone further on the UDR, using the arguments you had deployed in the talks earlier in the day. Dr FitzGerald stressed (at length) the importance of more visible RUC involvement in the operations of the UDR in Roman Catholic areas, on lines similar to those used by the Irish in the negotiations earlier that day.

Mixed Courts

3. Dr FitzGerald said with great emphasis that he could not understand our attitude on mixed courts. Either we had objections to mixed courts, in which case we should state them; or we had not, in which case we could agree to establish mixed courts once the modalities had been worked out in the Intergovernmental Committee. We seemed to have given no serious thought to the subject. We were saying that there were no legal objections, and Lord Lowry had said that he would carry out whatever decisions Parliament might take. Dr FitzGerald did not see how there could be constitutional objections to mixed courts: a sovereign state could appoint whomever it wanted to be a judge within its jurisdiction. Our position apparently was

SECRET AND PERSONAL

that we were against mixed courts for unspecified reasons, that we were unwilling to give serious thought to the subject before an agreement was signed but that we were willing to have the possibility of mixed courts mentioned in the agreement. If the agreement mentioned the possibility but absolutely nothing happened afterwards, the Irish Government would be very heavily criticised.

4. When I explained our position and quoted our new draft sentence for the agreement, Dr Fitzgerald said that the mention in that sentence of consultations with the two judiciaries would be greeted with bitter hilarity in the Republic, where the opposition of the Northern Ireland judiciary to mixed courts was well known. When I explained why a "side document" committing us to mixed courts in the future was not a starter, Dr Fitzgerald said that this was understandable.

The Fund

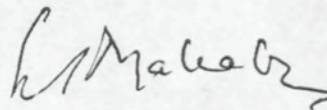
5. Dr Fitzgerald spent some time telling me how he had had a word about the possibility of an Anglo-Irish agreement and the desirability of financial support from friendly governments with each of the other EC Heads of Government except the Dane and with Delors of the European Commission. All had expressed interest in contributing to a fund. He had also spoken to the Canadian and Australian Heads of Government, who had been equally positive. The British and Irish Governments should contact all these other governments at a senior level shortly before an agreement was signed. (He did not intend to approach the Holy See, with which his relations were strained.) The Taoiseach said he did not understand why we opposed the idea of money from the EC budget and wanted to seek it from each EC government instead. If the money was paid by the Commission into a trust or fund for broadly charitable purposes, it would not count in calculating the British net contribution to the EC budget. (Mr Lillis suggested to me afterwards that payments from the EC budget into a fund, and not direct to HMG, need not be considered as raising the question of additionality in relation to UK public expenditure.)

The Secretariat

6. The Taoiseach raised this briefly, to say that he considered it very important that the head of the UK element in the Secretariat should be someone whose experience went wider than Northern Ireland affairs alone and who had participated in the negotiations. He said that he might send the Prime Minister a message to this effect in due course.

Conclusion

7. Dr FitzGerald was friendly, but obviously wished to demonstrate concern, especially about mixed courts. My impression from this conversation, as from the talks on 3 September and from my conversations with Mr Lillis, was that the Irish are close to a decision in favour of an agreement but are still fighting hard for another concession or two - notably concerning the UDR.



C L G Mallaby

5 September 1985

SECRET AND PERSONAL

The Royal Hospital, Kilmainham

I visited the Royal Hospital (incognito) on 4 September. It was built in the 1680s on the instructions of Charles II. It preceded by a few years the foundation of the Royal Hospital, Chelsea, and had exactly the same purpose. It has been described as the most important 17th century building in Ireland. It is classical in form, not unlike the Royal Hospital, Chelsea, but built of stone and not red brick. It now belongs to the Irish State, which has recently restored it at very great cost. The plan is to use it principally for cultural events.

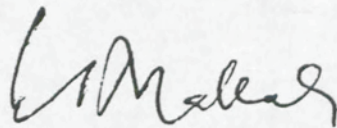
2. The Royal Hospital is in Dublin but surrounded by a small park. I saw no reason to doubt the view of Irish officials that it could be made secure and that good press arrangements could be made. Subject to the weather, helicopters could land in the grounds.

3. The historical associations of the Royal Hospital, Kilmainham, are strongly British. There are portraits of William and Mary themselves in the main hall. But nothing has happened at the Royal Hospital which would give it regrettable associations for nationalists.

4. Kilmainham gaol is about a mile away in the same district of Dublin. It was here that Parnell was imprisoned in 1882 and reached the "Kilmainham Treaty" with Gladstone's government about modification of the Land Act. Some of the leaders of the Easter Uprising in 1916 were executed at the gaol. But the British Ambassador in Dublin, like Irish officials, assured me that the Royal Hospital and the gaol, though they bore the name of the same district of Dublin, were seen in Ireland as separate locations.

SECRET AND PERSONAL

5. I thought that, if a Summit in the Irish Republic were to be acceptable to HMG, the Royal Hospital at Kilmainham would be an excellent choice of building.



C L G Mallaby

5 September 1985

MIXED COURTS

Suggested new sentence for the draft agreement:

"The Committee shall seek, [with the help of advice from experts as appropriate], ways of giving practical expression to this aim, considering inter alia the possibility of mixed courts in both jurisdictions in respect of ~~certain~~ *terrorist* offences."