



File

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10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

The Prime Minister has noted your minute of 20 September reporting your discussions with Mr. Nally on 12 and 13 September and attaching a draft message to Mr. McFarlane on the question of a United States contribution to a fund for economic and social development in Northern Ireland.

It is likely that the Prime Minister will meet Mr. McFarlane on 28 September for private talks, in which case she will mention the question of a United States contribution to a fund to him on that occasion. She would, therefore, prefer you not to send a message for the time being. Your draft might instead become a speaking note for the Prime Minister's use when she sees Mr. McFarlane.

I am copying this minute to the Private Secretaries to the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland.

Handwritten initials, possibly 'MS', in the bottom right corner of the page.

Charles Powell

23 September 1985

NW 49

You may also wish to glance through the records

Prime Minister

Are you

Ref. A085/2389

(1) Content for RTA to write?

PRIME MINISTER

Mr King's

(2) Happy with his report of his discussion with Mr Nally?

Dublin chimney attracted.

We had a further session with Mr Nally's delegation on 12 and 13 September. The next is planned for 23 September. I need no further instructions for that meeting. The purposes of this minute are to let you know what passed at the recent session, and to seek your agreement to a message going from me to Mr McFarlane in the White House.

NLW 20.7

Para 6 - the beginning - in working - in no

Mixed Courts

2. I explained once again, and even more fully than before, our reasons for being unwilling to commit ourselves to mixed courts, on lines that had been cleared with the Lord Chancellor. I said that our difficulties were more political than technical. A decision to establish mixed courts could very seriously antagonise unionist opinion and thus could endanger the agreement we were seeking to negotiate. It was not even clear that the introduction of mixed courts would enhance the confidence of the minority in Northern Ireland in the administration of justice. If split verdicts were announced, the minority would be no more content than before about verdicts where the judge from the Republic had been over-ruled. If all verdicts were announced as the decision of all three judges, rumours of majority verdicts would certainly be put about, and it would be automatically assumed that the judge from the South was frequently being over-ruled. I also pointed out that a system of courts with two judges from the North and one from the South would require double the present number of judges in Northern Ireland; that the participation of judges from the North in courts in the South would further increase the number; and that for various reasons it was impossible to recruit sufficient judges quickly if at all.

3. I said that there might be other ways than mixed courts of enhancing the confidence of the minority in Northern Ireland in the administration of justice, and that, if the general situation in Northern Ireland should in time, as a consequence of an Anglo-Irish agreement, become more favourable, the question of establishing mixed courts might become less difficult. I handed over our further revised language on mixed courts for the draft agreement.

4. Mr Nally, while making it clear that his instructions gave him no room to depart from the position which the Taoiseach took up at Milan on this matter, said that the Irish would prefer the sentence to read as follows (changes underlined):

"The Committee shall seek, with the help of advice from experts as appropriate, measures which would give substantial expression to this aim, considering inter alia the possibility of mixed courts in both jurisdictions for the trial of certain offences."

5. The Irish repeated their objections that if a sentence like this appeared in the agreement and was followed by no moves to establish mixed courts, the Irish Government would be accused of having been out-manoeuvred. I suggested that one way of avoiding this risk might be to omit all reference to mixed courts in the agreement and for the British Government to make a unilateral reference, for instance in Parliament, to mixed courts as one of the legal measures which might be looked at in the Intergovernmental Committee. There could then be no possibility of the Taoiseach being accused of having fallen into a British trap. Mr Nally did not seem to see much attraction in this idea, so I took the opportunity of repeating it.

6. In discussion of mixed courts, Mr Nally hinted pretty clearly that Irish Ministers might feel unable to honour their agreement to accede to the European Convention on the

Suppression of Terrorism unless we could make some move towards them in the legal field. He pointed out that the reference to extradition appeared in the same passage of the draft agreement as the proposed reference to mixed courts and that the Irish would be taking concrete action on extradition, through their accession to the Convention, while we were only undertaking to consider the possibility of mixed courts in the future. The decision about the Convention would be politically controversial in the Republic and would be indefensible unless there was a quid pro quo in the general area of the administration of justice. In this context, the Irish said that the fact that there were virtually no Roman Catholic judges in Northern Ireland was a long standing grievance among the minority, and they indicated that, if there was no prospect of early progress towards mixed courts, the appointment of a Roman Catholic to the Bench, and in particular to the High Court, might satisfy them.

7. The present situation is that one of the five judges on the Court of Appeal in Northern Ireland, and one of the five on the High Court, are Roman Catholics; and one of the 11 on the County Court is a Roman Catholic; whereas among the QCs 19 are Roman Catholics and 14 are Protestants. Two judges were recently appointed to the County Court, both of them Protestants. No vacancies are expected to arise soon in any of the Courts. The Lord Chancellor's Department believe that Lord Lowry has repeatedly tried to appoint Roman Catholics to the Bench, but the candidates have declined, largely because the personal risks to judges, and especially Roman Catholics, are so great in Northern Ireland. The Irish in our negotiations have, however, alleged that there are highly respected Roman Catholic QCs who would be willing to become judges. They have mentioned five names to us. On investigation we have found that three of these are among the Roman Catholics who have turned down offers of appointment to the County Court Bench. One of the problems about appointments to the High Court is of course that vacancies occur very rarely. The Lord Chancellor is being

consulted about this subject and may wish to discuss it with Lord Lowry; subject to that, I shall be guided in further discussion with the Irish by the information in this paragraph.

Ulster Defence Regiment (UDR)

8. I informed Mr Nally of our decision that there would be a significant increase in the coming weeks in the number of patrols and particularly vehicle control points manned by the UDR where there would also be a presence of the RUC. I said that this should be visible by the time that an agreement might be concluded. The Irish expressed appreciation. But they stressed again that the UDR was a major focus of minority concern, and hence of concern to Irish Ministers; and they argued strongly that one or two minor adjustments in the deployment patterns of the security forces, whereby the RUC or the regular army might replace the UDR in a few strongly Roman Catholic localities, would be disproportionately helpful in the context of the agreement. This point is being considered with the Ministry of Defence. The Irish also said that it was most desirable from their point of view that, if there was an increase in violence after conclusion of an agreement, the regular army rather than the UDR should bear the brunt of dealing with it, using reinforcements from Great Britain if necessary. We said that contingency plans existed to send more regular army units to Northern Ireland in an emergency, and that the regular army would no doubt play an important role in such a contingency, but that we could give no promises about limiting the role of the UDR.

The Secretariat of the Intergovernmental Committee

9. The Irish said that, for them, the key role of the Intergovernmental Committee would be to make every effort to resolve through discussion differences between British and Irish viewpoints on matters within its remit. When the Committee was

meeting the discussion would of course take place there. But it would not be in continuous session, and when it was not meeting, they thought that the permanent Secretariat, to be located in Belfast, should be used to seek to resolve differences, in addition to its ordinary secretarial functions. The Irish representative is expected to be Mr Lillis, who has played an important part in our negotiations and is a personal confidant of the Taoiseach. They would like to see him matched by some one of comparable standing who has also been involved in the talks. I said that our conception was that the Secretariat would carry out secretarial functions and would also act as a channel of communication between the two Governments when the Committee was not meeting. The Secretaries would not take any decisions but might confer when some incident took place and report back to Governments for instructions. In this way, the British and Irish elements in the Secretariat would play a role in the decision-making process of their respective Governments. I said that the British side would be determined to make this process work. I gained the impression that, although the Irish would like to see some executive role for the Secretariat when the Committee is not meeting, they will settle for an arrangement whereby the two elements in the Secretariat can confer rapidly but would report back for decisions to their principals.

Summit Arrangements

10. I said that Ministers had come to no conclusions about dates, but mentioned 23 and 24 October to Mr Nally as possible dates. He thought that these would be favourably considered by Irish Ministers: indeed, he said that 23 October would be "ideal". I told him that a Summit at the Royal Hospital, Kilmainham, or elsewhere in the Republic, would not be suitable from the British point of view, and I suggested Hillsborough as being preferable. Mr Nally will put this to Irish Ministers; his initial reaction was that the media reporting would be regrettably coloured by demonstrations against the agreement in

the vicinity of Hillsborough. I suggested that we could hope to minimise this risk by keeping the location and date secret and unclear as late as possible.

11. I explained your objections to a press conference without questions following the Summit, and Mr Nally took note.

12. I attach a draft version of the passage for the communiqué which you have already seen at various stages. The changes suggested at our last session of talks are in paragraph 3a, where at Irish suggestion the need for an RUC presence with the military when their operations involve direct contact with the community is given particular priority; and at the end of paragraph 3b, where a reference to the military is added to a sentence which hitherto referred only to the RUC.

Possible message to Mr McFarlane

13. We have made progress in discussing the idea of a fund with the Irish. The Secretary of State for Northern Ireland is expected shortly to consult colleagues about the position reached. The Irish have had exploratory contacts with senior United States officials and with Speaker O'Neill of the House of Representatives. They have gained the strong impression that there is a high possibility of a very generous United States offer of money for expenditure in Northern Ireland and the Republic as an expression of support for an Anglo-Irish agreement. They intend shortly to suggest to Speaker O'Neill that he should now have a word on the subject with the President. The Irish would like us to use our links with the White House in order to make clear that we share the Irish hope that the United States might express support for an agreement, and back that up with a considerable sum as a means of welcoming the agreement. The reason for moving quickly is that Congress is expected to go into recess in mid-November and the procedures for securing agreement to expenditure will need to be gone

through fairly rapidly once an Anglo-Irish agreement has been signed. If the White House and the Speaker were agreed in advance, those procedures would run far more smoothly.

14. I attach a draft message which I should like, if you agree, to send to Mr McFarlane. The draft makes clear that no decision of principle has been taken in London to conclude an Anglo-Irish agreement or to establish a fund. The draft avoids saying anything substantial about the content of the proposed agreement. I expect you will prefer to inform the Americans of that only when Ministers have definitely decided to conclude an agreement: and at that stage a message from you to the President would clearly be the right means. The Foreign and Commonwealth Secretary and the Northern Ireland Office have been consulted about the proposed message to Mr McFarlane and are content.

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

REA

ROBERT ARMSTRONG

20 September 1985

As at 13 September

DRAFT BAnglo-Irish Agreement: Draft Passage for a Communiqué

1. The agreement provides for entry into force as soon as each Government has formally notified the other of acceptance. This exchange of notifications will not be completed until the agreement has been approved by Dail Eireann and by the British Parliament. The two Governments intend that action to implement the provisions of the agreement should begin once the exchange of notifications had been completed. The first meeting of the Intergovernmental [Commission] will take place as soon as possible thereafter. The British side will be led by the Secretary of State for Northern Ireland and the Irish side by the Minister designated as the Permanent Irish Ministerial Representative.

2. The two Governments envisage that the meetings and agenda of the [Commission] will not normally be announced. But they wish it to be known that at its first meeting the [Commission] will consider its future programme of work in all the fields - political, security, legal, economic, social and cultural - which come within its remit, and will concentrate in the first instance on:

relations between the security forces and the minority community in Northern Ireland; and

ways of improving security co-operation between the two Governments.

The two sides intend that progress should be made quickly in these fields, in the interests of all of the people of Northern Ireland.

3. In addressing the improvement of relations between the Security forces and the minority community, the meeting will consider:

a. how the principle that the military (which includes the UDR) operate only in support of the civil power can be further implemented in the operations and deployment of the security forces in Northern Ireland, with the particular objective of achieving as rapidly as circumstances permit the full implementation of this principle in operations which involve direct contact with the community, save in the most exceptional circumstances;

b. ways of underlining the established policy of the Royal Ulster Constabulary that they discharge their duties even-handedly and with equal respect for the unionist and nationalist identities and traditions; and the extension of such measures, as appropriate, to the military.

4. In considering the improvement of security co-operation between the two Governments, the meeting of the Intergovernmental [Commission] will give particular attention to the policing of border areas and also consider the implications of the Irish decision, of which the Taoiseach has informed the Prime Minister at the present meeting, to accede to the European Convention on the Suppression of Terrorism.

SECRET AND PERSONAL

DRAFT MESSAGE

SIR ROBERT ARMSTRONG TO MR ROBERT McFARLANE, WHITE
HOUSE

VIA CABINET OFFICE CHANNELS ONLY

MESSAGE BEGINS

As you will know, negotiations are taking place between the British and Irish Governments about a possible agreement concerning Northern Ireland. Neither Government has yet taken a decision of principle on whether to conclude an agreement. But progress has been made and there is a possibility, subject to further progress, that an agreement could be signed by the Prime Minister and the Taoiseach around the end of October. There is no question in a single agreement of solving all the problems of Northern Ireland; but the British and Irish Governments believe that an agreement of the type they are hoping to conclude would represent a useful step forward, benefiting both communities in Northern Ireland as well as relations between the British and Irish Governments, and providing those in the United States and elsewhere who are concerned with Ireland with a sense that the situation is not frozen and that the two Governments can and will work

together, within the constraints of what is possible, to reassure and improve the confidence of both communities in Northern Ireland and promote greater peace and stability there.

2. I understand from preliminary contacts which British and Irish representatives have had with American officials that the United States would be likely to welcome an agreement of the kind being negotiated. A strong statement of welcome by the President would give great pleasure to the Prime Minister, and, I believe, to the Taoiseach, and would most certainly help to increase the chances of success of the proposed agreement.

3. The agreement is likely to commit the two Governments to work together, and with external support, to promote economic and social progress in both parts of Ireland and to encourage dialogue and reconciliation there. I have heard that the United States Government might consider reinforcing its support for an agreement by giving a considerable amount of money for such purposes. Such generosity would of course be warmly welcomed by both the British and the Irish Government.

4. I understand that a representative of the Irish Government may shortly suggest to Speaker O'Neill that he should discuss the question of United States support for an Anglo-Irish agreement with the President. The purpose of this message is to say that the British Government is aware of this approach to the Speaker, and that we think it would be most helpful if American support for an Anglo-Irish agreement were to be reinforced by financial means as well as expressed in a statement. If the United States Government did decide to respond in this way, the British and Irish Governments might set up a fund to receive and administer the contributions made. We and the Irish have some preliminary ideas about how such a fund might operate. We both attach importance to it being seen that American generosity is a freely offered response to an agreement and not an inducement provided in order to encourage the two Governments to conclude an agreement.

5. The success of an agreement would depend very much on careful presentation in the United Kingdom and Ireland. Both Governments are therefore extremely keen to prevent elements in the agreement becoming public in advance, since this would make

it impossible to present the whole agreement in a balanced manner if it is concluded. We are therefore restricting knowledge of the proposed agreement to a very few people. We should be most grateful if you could do the same in Washington. Sir Oliver Wright knows of this message and would be in a position to discuss the idea of a fund and other aspects of our plans with you, if you should wish. Later, if the two Governments do decide to go ahead with an agreement, we should of course wish to discuss it in greater detail with the Administration. At that stage, once an agreement has been signed, it might be useful for the Prime Minister and the Taoiseach to send special emissaries to Washington to follow this up; but I think that that would be premature at present, unless and until an agreement is signed - which still remains uncertain.