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PRIME MINISTER  
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CD 2/11.

Anglo-Irish Relations: Northern Ireland

This minute describes our meeting with Mr Nally and his team on 29-30 September. It is intended to form the basis, together with the Secretary of State for Northern Ireland's minute of 27 September and the Foreign and Commonwealth Secretary's minute of 28 September, for your meeting with the two Secretaries of State on 2 October.

The European Convention on the Suppression of Terrorism

2. We made very clear to Mr Nally during two discussions of this subject in the latest round of talks that British Ministers were considerably dismayed by the change in the Irish position about acceding to the Convention, taking the view that it considerably shifted the balance of advantage for the British Government in reaching an agreement of the kind under discussion. I pointed out that there was no parallel could justifiably be drawn between this matter and the British position on mixed courts. The Irish had told us that, in the context (though not as part) of an Anglo-Irish agreement, they would be ready to accede to the European Convention, whereas we had throughout the negotiations made clear that we could go no further on mixed courts than to agree, without commitment, to discussion of the question in the Intergovernmental Committee in the future. The Irish emphasised that their Government still wanted to accede to the Convention; but in the absence of anything specific on our side that would justify a claim that there were to be changes in the system of administration of justice in Northern Ireland that would improve the confidence of nationalists in the fairness of the system, the Taoiseach would

Then they could have no confidence in mixed courts.
 not be able to carry in the Dail a proposal to accede to the Convention, which would result in sending more people back to Northern Ireland to be tried under a system in whose impartiality the Irish had no confidence. This would be particularly difficult in the present state of discussions on the conclusion of a supplementary treaty on extradition between the United States and United Kingdom, which would result in more Irishmen being extradited to the United Kingdom: Mr Haughey and his opposition colleagues were whipping up the Irish National Caucus in the United States against the treaty. If the Irish Government went to the Dail in present circumstances and asked for approval of accession to the European Convention, there would be very strong and widespread criticism and the Government would probably be defeated. The Irish recognised that our position on mixed courts had always been and still was a readiness to consider the possibility of mixed courts on the basis that we had not decided in advance that they were "not on"; but the Secretary of State for Northern Ireland's remarks about mixed courts when he visited Dublin on 17 September, coming on top of a succession of news stories that appeared to reflect official briefing, had finally convinced Irish Ministers that we had no intention of agreeing to mixed courts in the foreseeable future (this has to be taken in conjunction with Mr Barry's statement to the Foreign and Commonwealth Secretary in New York that he and the Taoiseach had been "greatly reassured" by their meeting with Mr King in Dublin: the first hint of a change in the Irish attitude came at a meeting on 13 September). In short, if we could do no more than contemplate the possibility of mixed courts, the Irish could go no further than contemplating the possibility of accession to the European Convention.

3. We might be able to shift the Irish into a more positive attitude to the Convention if we were able to tell them that the Lord Chancellor was minded to appoint as the sixth member of the High Court in Northern Ireland a person who was (as it happened)

a Roman Catholic. But I formed the clear impression that we should not be able at present to claw back a commitment from the Irish to accede to the Convention. They indicated a willingness to meet us to the extent of mentioning the possibility of Irish accession to the Convention among the subjects named in a Summit communiqué for discussion at the first meeting of the Intergovernmental Committee. They would regard it as essential, however, that the communiqué should also mention that the possibility of mixed courts would be discussed at the first meeting of the Intergovernmental Committee. Another possibility, which we have not so far discussed but could pursue with the Irish, might be to suggest that the possibility of Irish accession to the European Convention should be mentioned in the agreement itself. This would have the disadvantage of establishing a firmer link between the possibility of Irish accession to the Convention and the establishment of mixed courts, but would have the advantage of avoiding a reference to mixed courts in the Summit Communiqué. My own judgment would be against putting this possibility to the Irish: I see no reason to suppose that they would be prepared to consider a reference to Irish accession in the agreement itself.

#### Garda Presence in the Border Areas

4. The Secretary of State for Northern Ireland mentioned in paragraph 4 of his minute of 27 September that the Irish had so far been vague about what would be involved in the redeployment of a Garda task force to the border areas. At the recent session of the talks, the Irish said that the Garda presence in the border area was in the process of being built up again to the highest level at which it had ever stood in the past, at a cost between now and the end of the year of over £(Irish) 100 million; this amounted to restoring the task force, and they were prepared to agree with us a form of words with which this build-up could be described in public. Furthermore even more Garda personnel would be sent to the border areas if

necessary , the numbers depending on the perceived need. They said, however, that they would not wish us to give publicity to the scope of their deployment, since this would expose the Irish Government to criticism that the problem of crime in Dublin, which is a matter of major political concern in Ireland, was being neglected for the sake of an increased Garda presence on the border.

Ulster Defence Regiment (UDR)

5. We described to the Irish again our intention that there should increasingly be an Royal Ulster Constabulary (RUC) presence at operations of the UDR in largely Roman Catholic areas in Northern Ireland. We were able to correct the incomplete understanding which the Irish had of the precise areas where the UDR are operating. We added the new point that, given that there is increasingly an RUC presence at UDR operations, the army is about to issue an internal instruction that new recruits to the UDR should in future not make use of the power of arrest, save in a physical emergency.

The Secretariat of the Intergovernmental Committee

6. There was no indication at the most recent meeting that the Irish disagreed with our view that the Secretariat, in addition to normal secretarial duties, should act as a channel of communication between the two Governments when the Intergovernmental Committee was not meeting, but that the British and Irish elements would have to refer back to their principals for decisions.

7. As regards the location of the Secretariat and the timing of its establishment, the Irish again argued that it would be best to set up the Secretariat in Belfast as soon as the agreement entered into force, since otherwise unionist opponents of the agreement would concentrate their efforts on preventing

the arrival of the Secretariat in Belfast. We said that Belfast was accepted by both sides in the negotiations as the right location for the Secretariat. The question was how soon it should move there after the agreement entered into force. I put to the Irish that the first meeting of the Intergovernmental Committee might take place in London, with the Secretaries travelling from Belfast and Dublin. They did not rule this out. The Irish are still thinking in terms of a larger and higher-powered Secretariat than the Northern Ireland Office consider necessary to perform the tasks. I believe, however, that it will be possible to persuade them, on practical and security grounds, to start with a very small presence. The Irish made it clear that from their point of view the location of at least some element of the Secretariat in Belfast from the outset, or very soon after it, was an essential element in the whole package. In discussion, however, they came to accept that it might be possible, if the Secretariat existed in Belfast from the start, for the actual number of Irish officials present in Belfast from the beginning to be very small. I asked them to consider an initial Irish presence of two people; the number could later be increased in the light of our assessment of reactions to the agreement. There was some suggestion that they might be content at first with an Irish element consisting of three officials and one typist, all without dependants; we might be able to get them lower still. Starting from that position we should be able to make it difficult for them to build up further unless and until there was a demonstrable need for more staff.

#### The Draft Agreement

9. I put to the Irish the suggestion in paragraphs 7(a), (b) and (c) of the Secretary of State for Northern Ireland's minute of 27 September. I attach an amended version of the draft agreement which incorporates changes at the start of Article 6 and in Article 7 (b) and (c) which seek to accommodate Mr King's views. Although all these changes were made ad referendum to

Ministers on both sides, I had the impression that they would accept the changes to Articles 6 and Article 7(c). The deletion of the phrase "parades and processions", which has for the present been placed in square brackets in Article 7(b), may be acceptable to the Irish on the understanding that either side could say (for instance at the press conference or in Parliamentary debates) that (as is the case) the reference in that Article to "forthcoming events" embraced parades, processions, sporting occasions and other events with possible security implications.

10. The Irish side, for their part, proposed two further amendments:

a. In Article 5(c), to substitute "significantly or especially affected" for "significantly and especially affected". The effect of this would be to allow the Irish Government to put forward views and proposals on legislation and major policy issues if these issues met only one, not necessarily both, of the criteria that they "significantly" and that they "especially" affected the interests of the minority community. The Irish argued that there could be local issues which "especially" affected the nationalists in a particular district but did not "significantly" affect the interests of the minority community in Northern Ireland as a whole. On the whole it seemed to the British side that this was a distinction without all that much of a difference: an issue which especially affected the interests of a part of the minority community was likely to be regarded as "significantly" affecting the interests of the minority community as a whole. We therefore agreed to put the amendment forward to Ministers.

b. They proposed an amendment to Article 12 which would commit the two Governments, not (as before) to agreeing the

that the establishment of an Anglo-Irish Parliamentary Body was for parliamentary decision - that is a statement of fact that does not depend on intergovernmental agreement - but to giving "support as appropriate "to such a body, if it were to be established. The new formulation, as finally agreed in discussion, seemed to us to be an improvement on the old.

Further Instructions

11. My next meeting with Mr Nally is scheduled for 7 and 8 October. I should be grateful if your meeting with the two Secretaries of State on 2 October could decide the line I should take on the following matters:

a. European Convention on the Suppression of Terrorism. Should I continue to press for a mention of this in the Summit communiqué, even on the basis of "considering the possibility of" rather than a commitment to accession? Should officials suggest to the Lord Chancellor's Department the appointment of a Roman Catholic as a sixth judge on the High Court in Northern Ireland provided that the Irish will in return accepted firmer language about the question of their future accession to the European Convention?

b. Secretariat. Pending a possible meeting between the Secretaries of State for Foreign and Commonwealth Affairs and Northern Ireland and Mr Barry, should I seek in the talks with Mr Nally to establish a more specific understanding at the official level of how the Secretariat should operate, within the confines of the role forseen for it in paragraph 6 above? Have I authority to agree that the Secretariat should in principle be established in Belfast once the agreement has entered into force, but at first only on a skeleton basis?

c. Draft Agreement. Are the amendments to Articles 5, 6, 7 and 12 acceptable?

d. Title of the new body. The Irish still dislike "Committee" but would clearly accept "Conference". Should I continue to hold out for "Intergovernmental Committee", in the hope that the Irish will concede the point at the end of the day? Are Ministers prepared to consider "Intergovernmental Conference" or "Intergovernmental Standing Conference"?

e. Public descriptions of the Intergovernmental Committee. I am in no doubt that the use of the word "consultative", discussed in paragraph 5 of the Secretary of State for Northern Ireland's minute, would create grave political difficulties for the Irish Government. From the point at which they finally accepted that joint authority was not on offer in any shape or form they have consistently emphasised that the Taoiseach would not enter into an agreement involving increased security co-operation on the basis of a role which would be expressly and publicly described as purely "consultative". We have been equally emphatic that we must be able to say that the Irish Government has no executive role and that final responsibility for decisions rests with the British Government. Both these requirements could be met by means of a formula on the lines of the annexed draft. May I have authority to suggest that to the Irish? This formula could of course be simplified on occasion to say merely that there was no derogation from sovereignty and the Intergovernmental Committee had no executive role.





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

REA

ROBERT ARMSTRONG

1 October 1985

CONFIDENTIAL



## ANNEX A

If asked to describe the nature of the Intergovernmental Committee on whether it is "consultative", the line in reply might be:

I am not sure that there can be a simple, one-word description of arrangements between two sovereign Governments that are probably without parallel. The Agreement provides for the first time a formal and continuing institutional framework in which the Irish Government can put forward to the British Government their views and proposals on the matters covered in the Agreement. Moreover, there is an obligation to make determined efforts to resolve differences. This is an important provision which both Governments take seriously. At the same time the question of sharing executive responsibility does not arise, since Article 2(b) of the Agreement makes clear that there is no derogation from the sovereignty of either Government, so that each retains responsibility for the administration of government within its own jurisdiction.