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

Sir Robert Armstrong GCB CVO

Ref. A084/2922

1 November 1984

Dear Len,

Anglo-Irish Relations: Northern Ireland

--- Further to my letter of 31 October, I now attach copies
of:

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

in the form in which they were agreed after discussion at your Secretary of State's meeting on the afternoon of 1 November.

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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DRAFT OF 2 NOVEMBER 1984

NORTHERN IRELAND: BRITISH STATEMENT OF POSITION

The agreed purpose of the current confidential discussions between British and Irish officials is to see whether it is possible hypothetically to identify a set of proposals 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 set of proposals 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 set of proposals may be acceptable.

3. It is also accepted by both sides that any set of proposals 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

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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 proposals must also be adequate to check and if possible 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 proposals might be built on two central and reciprocal elements: on the one hand, action by the British Government to accord the Irish Government a right to contribute, on a systematic and institutionalised basis, to the consideration by the British Government of policy on security and other matters affecting the interests of the minority community in Northern Ireland, and to introduce a measure of devolved government in Northern Ireland based on an elected Assembly and Executive, and on the other hand, action by the Irish Government formally to waive the territorial claim on Northern Ireland which is embodied in the present Irish Constitution and to encourage the introduction of a measure of devolution 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
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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 opportunities for making a meaningful contribution to the formulation of security policy and of policy in other areas affecting the minority; and would like to find a more positive alternative to "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 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

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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. The British side have made it clear that these proposals are predicated on the introduction of an acceptable system of devolved government in Northern Ireland. Examples advanced by the Irish side to which the right of consultation should apply include nominations by the Secretary of State to public bodies and institutions and to any bodies set up to give effect to these arrangements; nominations to a devolved Executive;

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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.

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 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 suggestive of joint authority. The British side accepts however that the Government of the Republic would appoint a resident representative in Northern Ireland (whose style and title would be for further consideration) who would have supporting staff and with whom the Secretary of
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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, co-ordinate 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.

Security

10. It is agreed that there should be a Joint Security Commission (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 JSC 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 sees the functions of the JSC as limited to Northern Ireland; the British side, while

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accepting that measures discussed in the JSC would relate primarily to Northern Ireland, believes that there should be scope for applying some such measures in the Republic where that would enhance security co-operation. The Irish side sees the Ministerial component in the JSC 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 guidelines 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, and in the appointment of members of Boards of Visitors for the prisons in Northern Ireland. The British side, while accepting that the JSC would be within the framework of the AIIC, sees its Ministerial component as comprising the Secretary of State for Northern Ireland and the Irish Minister for Justice (who is responsible in the Republic for law and order) and its primary function as being to improve security co-operation between the two sides in the fight against terrorism. The British side has proposed that the

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JSC's initial work programme should cover such matters as the exchange of intelligence, technical co-operation (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.)

12. The Irish side accepts the desirability of establishing a joint body to promote security co-operation as advocated by the British side, but would prefer such a body to be separate from the proposed JSC. But it has made no 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 Policing Measures

13. Both sides accept that (a) the operational effectiveness of policing arrangements in the Province should not be impaired; and (b) measures are in principle needed to help the minority community to identify with and support the police to a greater extent than at present. The British side has proposed a number of practical measures

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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 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 in Northern Ireland. In response to British objections, the Irish have asked whether arrangements of this kind might be introduced on a temporary basis - eg for a specified period of five years - with the avowed purpose of restoring minority confidence 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 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

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discussion, involving experts on both sides, is needed in order to establish whether mutually acceptable arrangements could be worked out.

Mixed Law Courts

15. 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 have been tentatively explored. 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

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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 Anglo-Irish Parliamentary Group. There has been no detailed discussion of the possibilities; but the Irish side has expressed general agreement with the idea that a start could be made by enhancing the role of the existing Group, 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; and that it could 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

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political value in securing the support of the minority community and the SDLP for any package of agreed measures. The Irish side has drawn attention to the fact that all the Unionist parties in Northern Ireland and the SDLP 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 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 United Kingdom.

Devolution

19. Both sides are agreed that the introduction of a system of devolved government into Northern Ireland based on an elected Assembly and Executive is not merely desirable in itself but would be an indispensable concomitant of the other proposals discussed in this note. 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

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that the establishment of a system of devolved government acceptable to both communities would depend upon the co-operation of the Northern Ireland political parties and the support of the Irish Government; and that involving the Republic in the affairs of the Province on the basis proposed 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 government in which both communities were represented were to be 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),

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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. Legislation would be required in both countries.

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DRAFT PASSAGE ON NORTHERN IRELAND FOR INCLUSION IN
SUMMIT COMMUNIQUE

The Prime Minister and the Taoiseach agreed that it was a major interest of both their countries that there should be peace and stability in Northern Ireland. They also agreed that this should be the subject of close and continuing dialogue between the two Governments. In this context they further agreed that:

1. 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.
2. 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.
3. The social and cultural traditions of both the majority and the minority communities in Northern Ireland should be recognised and respected.
4. The institutions of government in

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Northern Ireland should be such as to provide both communities with the confidence that their rights will be safeguarded.

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