

NORTHERN IRELAND: BRITISH STATEMENT OF POSITION

1. 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 lasting peace 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 Northern Ireland. It is agreed that this will necessarily involve the strengthening of Anglo-Irish relations within the existing institutional framework.
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 judgement 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 adequate to achieve the objectives set out in para. 1; should be durable and thus remove uncertainty; and transparent, in the sense that it should contain no hidden provisions and no features which might generate suspicions on either side of the border that there were hidden provisions.
4. A fundamental idea emerging from the discussions is that the proposals might be built on two central and reciprocal elements: on the one hand, action by the United Kingdom Government to accord the Irish Government a right to contribute, on a systematic and institutionalised basis, to the consideration by the United Kingdom Government of a range of policy matters including security as a means of strengthening the confidence of the minority community in Northern Ireland in the institutions of

government; on the other hand, action by the Irish Government formally to reassure the majority community in Northern Ireland: to achieve this, the Irish Government would be prepared as part of a balanced set of proposals to change the present Irish Constitution so as to make it plain that although there is an aspiration to Irish unity there is no territorial claim on Northern Ireland. It is also a part of the central concept that the UK Government would seek to introduce a measure of devolved government in Northern Ireland [based on an elected Assembly and a Northern Ireland Executive,] and that this would have the support of the Irish Government.

5. As the Prime Minister made clear in her conversation with the Taoiseach on 3 September, any question of joint authority is excluded: what might be envisaged is a formal obligation on the UK Government to consult and a right for the Irish Government to be consulted. The Irish side, while accepting the British position that the ultimate power of decision would continue to lie with the UK Government, believes that any arrangements for involving the Irish Government in the affairs of Northern Ireland must be such as to give it opportunities for making a substantive contribution to the formulation of policy, including security policy. The British side envisages that the UK Government could accept a formal obligation to allow the Irish Government a right to contribute to the formulation of policy on an agreed range of matters and would give full weight to the Irish Government's views.

Irish territorial claim

6. The Irish side envisages that the Irish Government would, if the balance in this set of measures were right, be prepared to embark on 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 what is now seen as a territorial claim; confirm that violence in pursuit of that aspiration was absolutely abjured; and emphasise that the aspiration could not be realised without the consent of a majority of the people of Northern Ireland.

Consultative arrangements

7. There is agreement that consultation as a matter of right would not apply to external defence, foreign affairs or finance, which would continue to be the sole responsibility of the UK Government. The Irish side hopes that the possibility of informal consultation on occasion and on request on these matters would not be excluded. Similarly the right of consultation would not apply to matters which had been devolved to a Northern Ireland Assembly or Executive. In addition to security (which is treated separately - see paragraphs 11-13 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. 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; 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.

8. Both sides agree that a system of devolved government commanding widespread acceptance throughout the community of Northern Ireland should be integral to the set of proposals. The Irish side, however, would not wish the introduction of the consultative arrangements to be blocked if it should prove impossible to get devolved government under way.

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 a 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 institutional structure described as a Commission. It accepts, however, that the Government of the Republic would appoint a representative in Northern Ireland (whose style and title would be for further consideration) who would have supporting staff and with whom the Secretary of 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, coordinate 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.

10. The Irish side has pointed out that, in the event that an Executive were formed, it would be of practical benefit to have a mechanism whereby the Executive and the Irish Government could consult on practical matters of mutual interest.

Security

11. 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 might include the Chief Constable of Northern Ireland and the Commissioner of the Garda Siochana or other appropriate senior police officers. 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.

12. The Irish side sees the functions of the JSC as limited to Northern Ireland; the British side, while accepting that measures discussed in the JSC would relate primarily to

Northern Ireland, believes that there should be scope for the application by the Republic of some such measures where that would enhance security cooperation. The divergence here, however, relates only to the question whether the JSC would be the appropriate forum in which to discuss issues of cross-border cooperation. The Irish side agrees that arrangements for such discussions are appropriate (though not within the JSC) and agrees also that measures discussed in the JSC in relation to Northern Ireland might at times be such that they could appropriately and usefully be applied also in the South either in the interests of security cooperation or for other reasons. The Irish side sees the Ministerial component in the JSC as comprising their proposed Ministerial Commission for Northern Ireland (i.e. the Secretary of State for Northern Ireland plus the Irish representative in Northern Ireland) and the JSC itself as having an important 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.

13. 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 cooperation between the two sides in the fight against terrorism. The British side has proposed that the JSC's initial work programme should cover such matters as e.g. the exchange of intelligence, technical cooperation (in training, forensic matters and the control of explosives), the exchange of personnel, joint inspection arrangements, the planning of coordinated operations 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.)

Practical Policing Measures

14. Both sides accept that (a) the operational effectiveness of policing arrangements in Northern Ireland 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 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 change in the RUC, are needed in order to attract support from the minority community. One suggestion that they have put forward to that end is the idea that predominantly nationalist areas should be policed primarily by people drawn from the nationalist community and, more broadly, 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 and announced as being on a temporary basis - e.g. for a period of five to ten 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 proposals; but the Irish would not object to it as a possible subject for study by the proposed Joint Security Commission at some time in the future.

15. In general, it is accepted by both sides that practical policing arrangements would be one of the key areas in any set of proposals but that further discussion, involving experts on both sides, is needed in order to establish whether mutually acceptable arrangements could be worked out.

Mixed Law Courts

16. The Irish side has suggested that persons tried whether in Northern Ireland or in the Republic for terrorist crimes might be tried by a single court comprising three judges for each case. These would be drawn from a panel of judges half of whom would be 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 British side has agreed that the feasibility of mixed courts should be examined and a number of implications have been tentatively explored. Both sides agree that the study of these ideas should continue, but the British side has emphasised that the formulation and operation of any scheme would require the cooperation of the Northern Ireland judiciary, which has not yet been consulted.

All-Ireland Law Commission

17. 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 on joint machinery for studying those areas and putting forward recommendations for reform. The Irish side has welcomed the British suggestions and has proposed in addition that the Commission would be required to devise proposals for the steps to be taken to establish the following:

- a single criminal court with the possibility of a jury which could be selected on an all-Ireland basis;

- a single court both for the North and for the South which would have sole jurisdiction in relation to human rights in both jurisdictions;
- a common legal regime in the area of human rights;
- a single appellate division of the All-Ireland Court;
- a uniform criminal law for the two jurisdictions.

The British side has expressed reservations about these proposals particularly so far as they relate to human rights.

An Anglo-Irish Parliamentary Body

18. The Irish side believes that a joint Parliamentary body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981 could be a useful element in any set of proposals. The British side believes that any such body should evolve pragmatically from the existing Anglo-Irish Parliamentary contacts. 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 systematising the existing contacts and making provision for more regular meetings leading to the establishment of a consultative body; this could receive reports from each Government on the progress of Anglo-Irish relations; and 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 act on them.

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 political value in securing the support of the minority community and the SDLP for any agreed set of 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. 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

20. As noted above, both sides are agreed that a system of devolved government in Northern Ireland based on an elected Assembly and on a Northern Ireland Executive would be integral to the proposals discussed in this note. Such a system would have to be acceptable to both communities in Northern Ireland and would depend upon the cooperation of the Northern Ireland political parties and the support of the Irish Government. The Irish side believes that the SDLP and the minority community would require this system to be established on a power-sharing basis. The British side believes that the Unionists would oppose this; that they would be most unlikely to participate in power-sharing arrangements; 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 authority 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

21. The British side has said that detailed discussion of this question is 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 would 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.