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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

SUB-COMMITTEE ON UNITED KINGDOM RELATIONS WITH THE
REPUBLIC OF IRELAND

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

Note by the Secretary of the Cabinet

Introduction

The Sub-Committee directed at its meeting on 24 April 1985 that a text incorporating a British proposal should be conveyed to the Irish delegation in the exploratory talks between British and Irish officials. Since then there have been two sessions of talks.

2. The purpose of this memorandum is to describe the stage now reached in the talks and to seek authority to pursue them on the basis of an amended text (Annex A).

The two recent meetings

3. At the first meeting on 29-30 April, we presented the British text, as authorised by the Sub-Committee. The Irish delegation expressed "extreme disappointment". It became clear that they were dismayed above all by the way in which we had recast the paragraph (paragraph 2 in that text) which provides that a new Committee, through which the Irish could express views on certain matters concerning Northern Ireland, would be merely consultative. The Irish delegation fully accepted that the British Government would retain sole responsibility (subject to devolution) for all decisions concerning Northern Ireland. But they complained that our text fundamentally altered the balance of earlier versions by stressing first that the United Kingdom would retain full responsibility for decisions and down-playing the role of the Committee in seeking to resolve differences between the two sides. It was clear that, although the substance of this paragraph was not significantly different from that of earlier versions, the alterations of emphasis were so important to the Irish as to threaten the continuation of the talks.

4. At the same meeting two areas of more substantive difference were highlighted:

a. The Irish pressed for a clear statement in any agreement that joint courts would be established for trying terrorist crimes. The form of such courts, but not the principle of their establishment, could be left for discussion in the new Committee.

b. The Irish said that it was essential that the text should empower the new Committee, should devolution not be achieved, to discuss economic and social matters in so far as they affected the interests of the minority community in Northern Ireland. There seemed to be two main considerations in Irish minds. First, the Social Democratic and Labour Party (SDLP) would not support the agreement unless a wider provision on economic and social matters

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was included. Second, they particularly emphasised that provision for wider consultation of the Irish Government on economic and social matters in the absence of devolution would provide a powerful inducement to the Unionists to agree to, and co-operate in, a measure of devolution which would allow these matters to be dealt with by the parties in Northern Ireland and would exclude the Irish Government.

5. Some progress was made at the first meeting on other points in the text. The Irish confirmed that they were willing to include in any agreement a binding assurance on the constitutional status of Northern Ireland. They said that it was politically necessary for them to have the SDLP's public support in concluding any agreement and that they would use all their influence with the SDLP to secure that support and to persuade the SDLP to participate in a devolved administration. On a specific point, which was mentioned at the meeting of the Sub-Committee on 24 April, the Irish said that their Government would be willing to accede to the European Convention for the Suppression of Terrorism and expressed confidence that this would require neither an amendment to their Constitution nor a referendum.

6. At the second session of the talks, on 15 May, we gave the Irish a revised version of the paragraph on the role of the new Committee, which contained the same elements as before but presented them differently. This had been authorised in correspondence with the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Northern Ireland. The Irish delegation accepted this amended version ad referendum to their Ministers, and a major stumbling block in the talks appeared thus to have been removed.

7. At the second meeting, we also discussed with the Irish, without commitment, the form of an article, which might be included in any agreement, embodying and binding Irish acceptance of the present border so long as there is no majority in Northern Ireland for Irish unity. We further discussed some material for the preamble of any

agreement, which the Irish had put forward. There was further discussion of the two substantive differences noted in paragraph 4 above:

i. Joint courts. The Irish side were prevailed upon to retreat slightly from their insistence on the establishment now of joint courts; they said that they might be satisfied with a commitment now to have joint courts, which actually would be established later. As at the first meeting, we resisted on grounds of principle and practicality, ranging from the views expressed repeatedly with particular force by the Lord Chief Justice of Northern Ireland to the need to study the many difficult questions involved in establishing and running joint courts. The Irish then said that their real purpose was to restore the faith of the minority community in Northern Ireland in the administration of justice, and that they saw joint courts as the only effective means of doing this. At the end of the meeting, it seemed possible that the Irish would settle for a statement in the text which would (a) note the importance of public confidence in the administration of justice and (b) say that the new Committee would seek measures to enhance that confidence and would examine, inter alia, the possibility of establishing joint courts.

ii. Economic and social matters. The Irish side held to the position that wider provisions for consultation in these fields, in the absence of devolution, were important as an inducement to the unionists to engage constructively in devolution and to the SDLP to support any Anglo-Irish agreement. As at the first meeting, we argued that the text already allowed for discussion of cross-border co-operation and the avoidance of economic and social discrimination. We said that there was no question of giving the Irish Government a right to a say on all economic and social matters in Northern Ireland. We asked them to say what limits they would be willing to set to the scope of consultation. By the end of the meeting they seemed to be seeing attractions

a formula which would limit consultation to their advancing views on British proposals for new legislation concerning Northern Ireland and on major policy issues in so far as they bore on the interests of the minority community. These arrangements would apply only in the absence of devolution.

8. The Irish delegation gave us at the second meeting some informal ideas for a new "International Fund for Reconstruction and Reconciliation in Ireland". According to the Irish ideas, substantial funds would be sought from the United States Government, and from some other Governments and the European Community; the money would be spent over three or four years, mostly in Northern Ireland; and the purpose would be to create jobs in areas which have suffered from unrest and long-term unemployment and to develop infrastructure in backward areas. These ideas have not yet been discussed.

The Position Reached in the Exploratory Talks

9. An amended version of the text approved by the Sub-Committee on 24 April, taking into account the two recent Anglo-Irish meetings, is attached as Annex A. The main changes are:

a. Section II consists of a draft of an article about the status of Northern Ireland, which recognises that this status could only change if a majority in Northern Ireland so wished, that the majority at present does not so wish, and that, if in the future a majority were to express a clear desire for Irish unity, the Irish and British Governments would support legislation accordingly. This article would be the first one (after the preamble) in any agreement, coming before, and in substance balancing, the ensuing articles about the new Committee. All the elements in it were present in the communiqué issued after the Prime Minister's meeting with the Taoiseach at Chequers on 18-19 November 1984, though this would be the first time that both Governments were committed on all three points.

b. Instead of the earlier paragraph 2 about the role of the Committee, the new text contains in paragraph 4 the version approved in correspondence with the Prime Minister, the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland, and accepted ad referendum by the Irish.

c. Section I of the new text consists of draft preambular material which did not appear in the earlier text. At our suggestion, it contains an emphatic rejection of violence and those who engage in it or support it. Each of its points reflects thoughts and language already used in Summit communiqués and other published joint documents.

d. The order in which the various subjects appear in the text has been somewhat altered. The main change is to introduce a sub-section about cross-border co-operation. This gives greater prominence to security matters by dealing with them under this heading as well as earlier in Section III. The revised order of the text also provides for a sub-section on cross-border co-operation, as a presentational means of helping to meet the Irish wish that more attention be given to economic and social matters.

e. A reference to the use of flags and emblems has been added in paragraph 9.

f. The text includes, at paragraph 11, a formula on the lines indicated in paragraph 7 ii. above, which would limit the right of the Irish Government, beyond security matters and the matters listed in paragraph 9 of the draft, to British proposals for new legislation concerning Northern Ireland and major policy issues in so far as they bore on the interests of the minority community. It is arguable that such a formula would in practice be conceding very little to the Irish Government: almost by definition, proposals for legislation and major policy issues become publicly known at an early stage, and there is already

nothing to stop the Irish Government from putting forward views to the British Government on things which are publicly known. If Ministers thought that something on these lines was acceptable in principle but that the particular formula was, presentationally, a little too sweeping, we could look for something more limiting. But the advantage of referring to "proposals for new legislation" is that it is clear and definite, and leaves no room for differences of interpretation about what is to be covered; if we sought to limit it to "major proposals for new legislation", there would be room for subsequent argument with the Irish Government about whether a particular proposal ought to be regarded as "major" or not. We should already be in that difficulty with "major policy issues"; it would be easier not to have to face it also in the reference to proposals for legislation.

10. There will probably be further argument with the Irish about joint courts and about consultation on proposals for legislation and on major policy issues. Paragraph 17 of the attached text includes alternative British and Irish language about courts. Paragraph 11, which in the absence of devolution would allow the Irish to put forward views on British proposals for new legislation concerning Northern Ireland and on major policy matters, may cause difficulty with the Unionists and may not be sufficient for the Irish. In addition, in line with the conclusions of the meeting of the Sub-Committee on 24 April, there has so far been no detailed discussion with the Irish about associated (or "confidence building") measures.

Conclusions

11. An Anglo-Irish agreement on the basis of the attached text, if the Unionists could be brought at least to acquiesce in it, should serve British interests by -

i. securing from the Irish Republic a formal and binding statement of recognition of the status quo in Northern Ireland;

ii. opening up a firm prospect of greater cross-border co-operation, especially in the important field of security;

iii. securing from the Irish Government a formal and emphatic condemnation of violence;

iv. opening the possibility of securing, through the proposed new Fund, significant sums for job creation and infrastructure in Northern Ireland.

12. I propose that officials should be authorised to hand the attached text to the Irish and continue the exploratory talks on this basis; and that, while alterations of wording could be explored, no substantive concessions should be made to the Irish without further reference to Ministers. Officials should explore the Irish ideas for a new "International Fund". Officials should also set in hand the work of casting the attached text in the form of a draft agreement.

Cabinet Office

21 May 1985

Draft of 17 May 1985

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

British Proposal

I. Preamble

1. The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland -

wishing further to develop the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Community;

recognising the major interest in both their countries, and above all of the people of Northern Ireland, in achieving lasting peace and stability in Northern Ireland;

recognising the need for continued efforts to diminish the divisions in Northern Ireland and

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to reconcile the two major traditions that exist in the two parts of Ireland;

reaffirming their total rejection of any attempt to promote political objectives by violence or the threat of violence and their determination to work together to combat those who adopt or support such methods;

recognising that a condition of genuine reconciliation and dialogue between the two communities in Northern Ireland is mutual recognition and acceptance of the rights of each community;

recognising and respecting the identities and aspirations of the two communities in Northern Ireland, and the right of each to pursue its objectives by peaceful and constitutional means;

reaffirming their commitment to a society in Northern Ireland in which all may live in peace, free from discrimination and

intolerance and with the opportunity for both communities to participate fully in the structure and processes of government;

agree as follows:

II. Status of Northern Ireland

2. The two Governments:

1. agree that any change in the status of Northern Ireland could come about only with the consent of a majority of the people of Northern Ireland;

2. note that the present wish of the majority is for no change in the status of Northern Ireland;

3. declare that, if in the future a majority of the people in Northern Ireland clearly wished for and consented to the establishment of a united Ireland, they would support the introduction in the respective Parliaments of legislation to give effect to that wish.

III. The Standing Joint Committee

3. There would be established within the framework of the Anglo-Irish Intergovernmental Council a new Committee, to be known as the Standing Joint Committee, to deal on a regular basis and in relation to Northern Ireland with -

- a. political matters;
- b. security and related matters;
- c. legal matters, including the administration of justice;
- d. cross-border co-operation.

Other topics might be added by agreement.

4. Unlike the existing AIIC machinery this Committee would be primarily concerned with North/South rather than East/West relationships and would meet on a regular rather than ad hoc basis. The British Government would accept that the Irish Government would put forward views and proposals on matters relating to Northern Ireland within the

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body's remit. Attention would thus be given to these matters at the highest level. In the interest of promoting peace and stability, determined efforts would be made through the Committee to resolve any differences. The focus of the Committee's work would be mainly in Northern Ireland; but some of the matters under consideration would involve co-operative action in both parts of the island of Ireland and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland might also be found to have application by the Irish Government. There would be no derogation of sovereignty on the part of either the United Kingdom Government or the Irish Government, so that each would retain responsibility for the administration of government within its own jurisdiction.

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5. The Committee would meet at Ministerial or official level, as required. There would be regular and frequent Ministerial meetings; and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Committees. Membership would be small and flexible. When the Committee met at

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Ministerial level the Secretary of State for Northern Ireland and an Irish Minister designated as the Permanent Irish Ministerial Representative would be joint Chairmen. Other British and Irish Ministers could attend meetings as appropriate: thus when legal matters were under consideration the Attorneys General might attend. Ministers would be accompanied by their officials and professional advisers: for example, when questions of security policy or security co-operation were being addressed they could be accompanied by the Chief Constable of the Royal Ulster Constabulary and the Commissioner of the Garda Siochana. There would be a small joint secretariat in Belfast, within which the Irish Government would maintain an office for the purpose of these arrangements.

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6. In relation to matters coming within its remit, the Committee would constitute a framework within which the Government of the United Kingdom and the Government of the Republic of Ireland could work together:

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- i. for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and

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ii. for peace, stability and prosperity throughout Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation.

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7. It is the declared policy of the British Government that responsibility in respect of certain matters within the remit of the Secretary of State for Northern Ireland should be devolved within Northern Ireland on a basis which would secure widespread acceptance throughout the community. The Irish Government support that policy. The arrangements described in this agreement would be largely unaffected by the creation of a devolved government in Northern Ireland, but some of the matters in paragraphs 9 and 12 might need to be reviewed, to take account of the transfer of responsibilities to the devolved administration.

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8. Both Governments recognise that devolution can be achieved only with the co-operation of the constitutional representatives within Northern Ireland of both the traditions there. If full

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devolution had not taken place, the Committee would constitute a framework within which the Irish Government could put forward views and proposals on the modalities of devolution in Northern Ireland, in so far as they bore on the interests of the minority community.

Political Matters

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9. The Committee would concern itself with measures to recognise and accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and to prevent discrimination. Matters to be considered in this area in respect of Northern Ireland include measures to foster the cultural heritage of both traditions, changes in electoral arrangements, the use of flags and emblems, the avoidance of economic and social discrimination and the advantages and disadvantages of some form of Bill of Rights in Northern Ireland.

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10. The focus of discussion of these matters would be on Northern Ireland, but the possible application of any such measures by the Irish authorities in the South would not be excluded.

11. Should it prove impossible to achieve and sustain devolution on a basis which would secure widespread acceptance in Northern Ireland, the Committee would constitute a framework within which the Irish Government could put forward views on proposals for legislation on Northern Ireland matters, and on major policy issues within the responsibility of the Secretary of State for Northern Ireland, significantly affecting the interests of the minority community.

12. The Committee would provide a framework within which the Irish Government could put forward views on appointments to be made by the Secretary of State for Northern Ireland to bodies including -

the Standing Advisory Commission on Human Rights;

the Fair Employment Agency;

the Equal Opportunities Commission;

the Police Authority for Northern Ireland;

the Police Complaints Board.

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Security and Related Matters

13. The Committee would consider:

- a. security policy;
- b. relations between the security forces and the community;
- c. prisons policy.

14. The Committee would address the security situation at its regular meetings. This would provide an opportunity to address policy issues, serious incidents and forthcoming events (eg parades and processions).

15. The Committee would consider relations between the security forces and the community, with particular reference to the minority community in Northern Ireland. With a view to promoting greater confidence in the security system, a programme of action would be put in hand which might include: the establishment of local consultative machinery, training in community relations, crime prevention schemes involving the community, improvements in

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arrangements for handling complaints, and action to increase the proportion of members of the minority in the RUC. It would be accepted by both sides that these matters would be directed primarily towards Northern Ireland, with the object of making the security forces more readily accepted by the minority community there, but that some of them might be developed by the Irish authorities in ways which might also have an application in the South.

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16. The Committee would also be able to consider policy issues in the prisons. Individual cases could be raised as appropriate, so that explanations could be given or inquiries instituted.

Legal Matters, Including the Administration of Justice

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17. The Committee would deal with issues of concern to both countries relating to the enforcement of the criminal law. In particular it would consider whether there are areas of the criminal law applying in the North and in the South respectively which might with benefit be harmonised. The two Governments agree on the desirability of ensuring that there is public

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confidence in the administration of justice.
[United Kingdom version: The Committee will seek means to this end, considering inter alia the possibility of establishing] [Irish version: The Committee would devise the necessary steps to establish] a system of joint courts for trying terrorist crimes. It would also be concerned with the oversight and review of arrangements between North and South for extradition and extra-territorial jurisdiction.

Cross-border Co-operation

Security Co-operation

18. With a view to enhancing co-operation between the security forces of the two Governments, the Committee would set in hand a programme of work to be undertaken by the Chief Constable and the Commissioner and groups of officials in such areas as threat assessments, exchange of information, liaison structures, technical co-operation, training of personnel, and operational resources.

19. The Committee would have no operational responsibilities; responsibility for police operations would remain with the heads of the

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respective police forces, and the Chief Constable of the Royal Ulster Constabulary would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister for Justice.

Economic, Social and Cultural Co-operation

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20. The two Governments would co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and consider the possibility of securing international support for this work.

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21. Should it prove impossible to achieve and sustain devolution on a basis which would secure widespread acceptance in Northern Ireland, the Committee would constitute a framework for the promotion of co-operation between North and South in Ireland in relation to cross-border aspects of economic, social and cultural matters in relation to which the Secretary of State continued to exercise authority.

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22. If responsibility were devolved in respect of certain matters under this heading currently within the remit of the Secretary of State, there would need to be machinery for practical co-operation between the responsible authorities North and South in respect of cross-border aspects of those issues.

IV. Inter-Parliamentary Relations

23. The two Governments agree that it would be for the Houses of Parliament in Westminster and the Oireachtas in Dublin to consider whether an Anglo-Irish Parliamentary body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981 could be established.

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