29.

Ref. A085/2053

PRIME MINISTER

Anglo-Irish Relations: Northern Ireland

This minute reports my latest round of talks with Mr Nally on 30-31 July and assesses the stage reached in the negotiations at the start of the summer holidays.

2. I began the meeting by saying that the Cabinet had reviewed the state of play in the negotiations and had decided that the British Government should continue to work for an agreement on the lines proposed. On timing, I said that Ministers were clear that any agreement must be debated in the House of Commons before any steps were taken to implement it: this was of course the view also taken by Irish Ministers. The Cabinet were also clear that it would not be desirable to have to recall Parliament prematurely to debate an agreement. This suggested that a Summit meeting might best take place at the end of October, and be followed by Parliamentary debate in London and Dublin and then by the start of implementation of the agreement through a first meeting of the Intergovernmental Committee. The Irish were extremely concerned that, if information about the negotiations continued to find its way into the media, opposition to the proposed agreement would mobilise and the whole arrangment would unravel. They said that their Ministers, who had also discussed the agreement last week, would like to bring signature forward to the first week in September. I said that I would report this suggestion of Irish Ministers to you and your colleagues, but I made it clear that it was not likely to be acceptable in London. Indeed, I suspect that Mr Nally privately realised that a Summit in early September was most unlikely; I had the impression that he personally was convinced by our arguments for waiting until the two Parliaments were in

NOIAAT

Session (the Dail is due to return two days after the House of Commons) rather than recalling them to debate the agreement. But he was clearly under firm instructions to propose signature in the first week of September.

3. The Irish also argued that, whether or not Parliament and the Dail were sitting at the time, debate should take place immediately after signature. They said that the Dail would almost certainly hold its debate on the very next day and they were concerned that, if the debate at Westminster were delayed, opponents of the agreement would have time to launch a more effective campaign against it. I said that it could well be possible to arrange a debate at Westminster within a matter of days after signature, even if it meant rearranging Parliamentary business, but that a debate on the very next day might not be difficult for practical and other reasons.

4. Mr Nally said that the view of Irish Ministers in their discussion last week had been that the agreement that was emerging was generally acceptable in itself, subject to the major difference about joint courts (see below), but that Irish Ministers were insistent that they needed to see the complete package in detail before they could reach any decisions. Mr Nally and his team said repeatedly that the missing element was significant British measures in the context of the conclusion of an agreement, which would actually alter circumstances in Northern Ireland. They said that our idea of a new Code of Conduct for the Royal Ulster Constabulary and the specific moves we planned concerning training for the Ulster Defence Regiment (UDR) were useful, but the Taoiseach would have a difficult task in defending the agreement in the Dail and persuading the SDLP to support it unless we could go further. The Irish team pressed especially for further measures concerning the UDR.

5. The Irish did not insist that the measures we took in the context of the conclusion of an agreement should be declared in the communiqué issued by an Anglo-Irish Summit. They seemed to go along with our view that the section of the communiqué concerning implementation of the agreement should be about the objectives for the first meeting of the Intergovernmental Committee rather than the actual measures which might be decided or announced at that meeting. Mr Nally reacted quite well to the language for a Summit communiqué which you authorised me to give him. He suggested only that paragraph 3(a) should be divided into two parts, as in the attached version. We took note of this, undertaking to report it to Ministers: in fact officials consider that this amendment could be accepted. The Irish were also receptive to the thought that, while some of the steps taken by the two Governments in rapid implementation of an agreement might be announced after the first meeting of the Intergovernmental Committee, it might be politically preferable for others to be announced unilaterally, for instance in the Parliamentary debates about the agreement. British officials will reflect on this possibility.

6. My discussion this time with Mr Nally about joint courts is recorded in my attached letter to Mr Steel in the Law Officers' Department. In a word, the positions of both sides were restated, and the Irish suggested that discussion of the subject between the two Attorneys General, which began with Sir Michael Havers's meeting with his Irish opposite number on 26 July, should continue. I said that Ministers had not yet had time to consider the idea put by the Irish Attorney General to Sir Michael Havers of a "side document" embodying a private understanding that a definite scheme for establishing mixed courts would be devised shortly after conclusion of the Anglo-Irish agreement; I gave no indication that such a scheme could be entertained by British Ministers.

NOIAAT

The state of play in the talks

7. The stage reached in my talks with Mr Nally is that we have virtually completed negotiations on the text for an agreement and have made considerable progress in discussing a Summit communiqué and other aspects of the presentation of an agreement. But disagreement persists about joint courts; and although we have persuaded the Irish to drop their concept of "associated measures", they are pressing us to undertake more steps in rapid implementation of an agreement, notably measures concerning the UDR; they believe that these could be very important in determining the reaction of the SDLP to the agreement. It is true that the two measures which the Irish are prepared to take in the context of conclusion of an agreement - redeployment of Garda task forces in the border area and adherence to the European Convention on the Suppression of Terrorism - are of genuine value to us, and that the measures we so far have in mind are less significant. We shall be considering whether there are any other steps, for instance concerning the UDR, which both would have merit in themselves and would help us in the context of the negotiations.

8. As of now, the Irish want an agreement but will not take a final decision until nearer the time. One consideration that will influence their decision will be the extent to which we can offer more in the way of specific measures, to be disclosed either in the Summit communiqué or in the subsequent debate in Parliament or as the outcome of the first meeting of the Intergovernmental Committee. The Irish will be very anxious that nothing should be done to encourage press speculation during the difficult period between now and conclusion of the agreement, which I think they realise will probably not be before late October. They, like us, might have to revise their views if the situation on the ground in Northern Ireland were to deteriorate seriously.

9. I am sending copies of this minute to the Secretary of State for Foreign and Commonwealth Affairs, the Secretary of State for Northern Ireland and the Attorney General.

RA

ROBERT ARMSTRONG

2 August 1985

NOIAAT

New Communiqué

31 July 1985

Anglo-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 be completed after the agreement has been considered by the House of Commons and by Dail Eireann. The two Governments intend that action to implement the provisions of the agreement should begin once the exchange of notifications has been completed. The first meeting of the Intergovernmental Committee 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 for Foreign Affairs].

2. The two Governments envisage that the meetings and agenda of the Committee will not normally be announced. But they wish it to be known that at its first meeting the Committee 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 are determined that progress should be made quickly in these fields, in the interests of all of the people of Northern Ireland.

3. In considering the improvement of relations between the security forces and the minority community, the meeting will address:

a. how the application of the general principle in the conduct of public order in the United Kingdom, that the military operate only in support of the civil power, can be progressively developed as circumstances permit in the operations and deployment of the security forces in Northern Ireland;

b. how in this context the operations and deployment of the British army including the Ulster Defence Regiment in Northern Ireland can increasingly be conducted not only at the request but also in the presence of the Royal Ulster Constabulary, having regard to considerations of community relations as well as to the need for operational effectiveness;

c. possible 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.

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

SECRET AND PERSONAL

70 WHITEHALL, LONDON SW1A 2AS

01-233 8319

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

Sir Robert Armstrong GCB CVO

Ref. A085/2054

2 August 1985

Anglo-Irish Talks about Northern Ireland: Joint Courts

Thank you for your letter of 30 July about the Attorney General's meeting with his Irish opposite number on 26 July.

I had a further session of the official talks with Dermot Nally on 30-31 July. The Irish side gave an account of the meeting between Sir Michael Havers and Mr Rogers which seemed to differ somewhat from the account in your letter. In particular, the Irish alleged that their Attorney General had been told that there were no legal difficulties on our side in the way of the establishment of mixed courts. Nally also recalled that the Lord Chief Justice in Northern Ireland had stated that the Bench would carry out whatever decisions were enacted by Parliament. They inquired what were the nature of the difficulties we saw in the proposition. I said that I was no lawyer but that, in my understanding, there were substantial politico-legal difficulties on the British side in the way of agreeing in principle to the establishment of joint courts in the Northern Ireland context. The most we could do, as I had often said to Nally, was to agree without commitment to consider the question in the new Intergovernmental Committee to be established under an Anglo-Irish agreement.

Nally said that the stalemate on the issue of mixed courts had persisted in the official talks for a considerable time. He suggested that the two Attorney Generals should continue to discuss the questions. I said that I thought that this would probably be a good way to pursue the matter.

Mr Rogers may therefore be in touch with Sir Michael Havers again before long.

/I am

Henry Steel Esq CMG OBE

SECRET AND PERSONAL

I am sending copies of this letter to David Goodall, Tony Brennan and Peter Robinson.

ROBERT ARMSTRONG

30

PRIME MINISTER

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

I attach a minute from Sir Robert Armstrong regarding the outcome of his latest round of discussions with Irish officials. There are a number of points on which decisions are required:

(i) Timing of a possible agreement

Irish officials were under instructions to suggest bringing forward signature to the first week of September. Sir Robert Armstrong undertook to report this while making clear that it was unlikely to be acceptable. In view of the strong feelings in Cabinet, agree to confirm that we cannot agree to signature until Parliament returns at the end of October?

(ii) Joint courts

The Irish side continued to hanker for a firm commitment to introduce joint courts and want further discussion between the two Attorney Generals. In particular they are pressing their suggestion that there should be a "side document" to the agreement embodying a private understanding that a different scheme for establishing joint courts would be devised. We can hardly object to further discussion between the two Attorney Generals. But we cannot surely accept a "side letter" which would probably leak and anyway be rather dishonest. Agree that the Attorney General should make this clear in further contacts with his Irish colleague?

(iii) Summit communique

[old version also attached]

The Irish side suggest some changes to paragraph 3 of the communique. Subject to the views of the Defence Secretary and the Northern Ireland Secretary these look tolerable. Agree?

(vi) UDR

The Irish side are pressing for further measures concerning the UDR, while recognising that these cannot appear in the Summit communique itself. Officials are considering these and nothing further will be said to the Irish side without a further submission to you.

No further contact is envisaged with the Irish side until the beginning of September.

C.D.P.

(C.D. Powell)

2 August 1985

SECRET AND PERSONAL

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C03AJJ

10 DOWNING STREET

From the Private Secretary

MR. HATFIELD
CABINET OFFICE.

The Prime Minister has seen Sir Robert Armstrong's minute of 2 August about the latest stage of his talks with Mr. Nally. On the timing of a possible Agreement the Prime Minister would, as Sir Robert indicated to Mr. Nally, prefer to confirm that we could not agree to signature until Parliament returns at the end of October.

On joint Courts, the Prime Minister would not favour the Irish suggestion that there should be a "side document". She would be grateful, therefore, if the Attorney General could make this clear in further contacts with his Irish colleague.

On the draft Communique attached to Sir Robert's minutes, the Prime Minister remains unhappy about paragraph 3(b) which, she believes, would seem to be interference in the way we conduct our own affairs.

I should be grateful if you could arrange for the Prime Minister's views to be taken into account in further progress on this matter.

I am sending a copy of this minute to Mr. Ricketts (Foreign and Commonwealth Office), Mr. Daniell (Northern Ireland Office) and Mr. Steel (Law Officers' Department).

TIMOTHY FLESHER

5 August 1985

SECRET AND PERSONAL