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Taoiseach's Meeting with British Prime Minister

London, 7 November, 1983

CONTENTS

1 Timetable

NORTHERN IRELAND AND ANGLO-IRISH

- 2 Steering Note
- ✓ 3 Anglo-Irish Intergovernmental Council [Joint Studies Report accompanies this Brief]
- 4 British political scene
- 5 Political situation in Northern Ireland
- ✓ 6 North/South Economic Co-operation
- 7 Note of meeting between Minister for Foreign Affairs and Mr. Prior, 19 October, 1983
- 8 All-Ireland Court
- ✓ 9 Criminal Law (Jurisdiction) Act
- ✓ 10 Extradition
- ✓ 11 Note on Meeting of Attorneys General, 21 October, 1983
- 12 Security (incl statistics)

EEC

Post-Stuttgart Negotiations

- 13 - Pivotal Issues
- 14 - Possible points for discussion
- 15 - Agriculture issues
- 16 - Structural funds
- ✓ 17 Enlargement
- 18 British 1983 Budgetary rebate
- ✓ 19 Insurance

INTERNATIONAL

- ✓ 20 International economic trends and policies
- ✓ 21 Mrs. Thatcher's visit to the US
- ✓ 22 East/West relations
- ✓ 23 Grenada
- ✓ 24 Middle East
- ✓ 25 Central America
- ✓ 26 Arms Control Negotiations
- ✓ 27 African issues

Friday 4 November 1983

19.10

Taoiseach, Mrs FitzGerald and Mr P. Prendergast arrive on EI 174 (Terminal One, Heathrow, Hounslow Suite)

Met by special representative of the Secretary of State for Foreign and Commonwealth Affairs. H.E. Ambassador Dorr and Mrs. Dorr.
(Taoiseach will be escorted by British security).

Proceed to Embassy

Private Dinner

(Mr Prendergast has private arrangements until Sunday - then stays at Carlton Towers)

Saturday 5 November 1983

Morning: Taoiseach and Mrs. FitzGerald accompanied by Ambassador and Mrs. Dorr, Mr. & Mrs Deane drive outside of London and have private luncheon

Afternoon: Secretary Donlon and Assistant Secretary Lillis arrive.

Stay at Carlton Towers Hotel.

Evening: Dinner at residence hosted by Ambassador and Mrs. Dorr.

Sunday 6 November

12.15 P.m. Taoiseach and Mrs. FitzGerald, Ambassador and Mrs. Dorr attend Mass at Farm Street.

13.00 Luncheon hosted by Mr. Dempsey

15.45 Tanaiste, MFA, Secretary Nally, Mr. McCarthy, Mr. Kelly arrive from Cork on Government aircraft.
Met by FCO representative and Embassy representatives.
Proceed to Embassy.

- 16.30 Briefing session at the Embassy
 Dinner at Embassy (Private)
 All above Party stay at Carlton Towers Hotel.

Monday 7 November 1983

- 08.10 Cars collect Delegation at Carlton Towers Hotel.
 Proceed to Embassy.
- 08.20 Depart Embassy for Chequers.
- 09.50 Arrive Chequers
 Tete-a-tete (with notetakers?)
 Ministers and officials hold separate talks.
- 12.00 (approx) Plenary session.
- 13.00 Luncheon hosted by Prime Minister Thatcher.
 Mr. McCarthy, Mr. Kelly and Miss O'Hanrahan to lunch
 separately in Chequers with British officials.
- (Note: Telephone calls may be received through Downing St.
 at 233-3000. All messages to go through O. O'Hanrahan).
- 14.45 (approx) Depart Chequers.
- 16.00 Arrive Embassy
- 16.30-17.00 Taoiseach briefs Irish correspondents
- 17.30 Press Conference
 (Approx.)
- 19.15 Tanaiste meets Mr. Kinnock
- 20.30 Reception in Taoiseach's honour hosted by Anglo-Irish
 Parliamentary Group at House of Commons
- C. 22.00 Buffet supper at Embassy

IRISH DELEGATION

*Tuesday 8 November 1983

08.30 Mr. Kinnock calls on Taoiseach at Embassy for working breakfast.

09.45 Taoiseach meets Dr. David Owen at the House of Commons.

10.30 Taoiseach meets Mr. David Steel, House of Commons.

Afternoon: Taoiseach and Mrs. FitzGerald return on Government aircraft to Dublin. Seen off by special representative of Secretary of State, Ambassador and Mrs. Dorr.

13.00 approx. Tanaiste and MFA on scheduled flight to Dublin.

*Subject to review. _____

- Annex 1 Irish delegation
- Annex 2 British delegation
- Annex 3 Home telephone numbers of Embassy staff.

IRISH DELEGATION

Dr Garret FitzGerald TD
An Taoiseach

Mr Dick Spring TD
An Tanaiste

Mr Peter Barry TD
Minister for Foreign Affairs

HE Mr Noel Dorr
Irish Ambassador

Mr Dermot Nally
Secretary to the Government

Mr Sean Donlon
Secretary, Department of Foreign Affairs

Mr P Dempsey
Minister, Irish Embassy

Mr Peter Prendergast
Assistant Secretary, Dept of the Taoiseach

Mr Michael Lillis
Assistant Secretary, Dept of Foreign Affairs

Mr Brian McCarthy
Principal Officer, Dept of the Taoiseach

Mr Declan Kelly
Private Secretary to the Taoiseach

Miss Orla O'Hanrahan
Irish Embassy

In attendance: Group Captain Robert Thomson
Lt Col Phillip Worrall
Wing Commander Tommy Cody

Taoiseach's Meeting with British Prime Minister

Steering Note

This note attempts to describe briefly the principal elements in Anglo-Irish relations at this juncture, with a view to determining (i) what, if any, room for manoeuvre our Government has and (ii) how best the Taoiseach might use that in his approach to Mrs. Thatcher.

Northern Ireland

The principal problem is the widespread and, we suspect, growing alienation on the nationalist side. By "alienation" is meant a refusal of British or Unionist authority to a degree which threatens or constitutes instability. The principal manifestation of this alienation was the 43% of nationalist votes cast for Provisional Sinn Féin in the recent Westminster elections.

In the absence of counteravailing events, the rising support for Sinn Féin will continue, and, it is widely expected, overtake support for the SDLP within two years. This is likely to be demonstrated in the local elections of 1985.

The present level of support for Sinn Féin has created difficulties for the credible presentation of a moderate Dublin policy both in Ireland (particularly among more fervent nationalists) and abroad, e.g. in the U.S. and Britain.

The emergence of Sinn Féin as the predominant nationalist political voice within two years would increase those difficulties qualitatively and create new and more daunting problems for our Government: for example, would we be forced to "deal" with Sinn Féin? And what would be the effects of such a development on the stability of our own State?

A key short-term objective in the interest of the stability of the island North and South, would therefore seem to be: to address and reverse the tide of nationalist alienation.

On the Unionist side, intransigence has been correspondingly reinforced. It is feared both by the Northern Ireland Office and ourselves that the leadership of the revived Official Unionist Party, which is already strongly so inclined, could easily be brought to declare integration within the United Kingdom to be its objective. A momentum for such a course could gather by the Summer of next year in circumstances of continuing impasse and would probably, in such circumstances, attract a body of support from Tories at Westminster, at first from a minority but soon unless some alternative seemed credible, from growing numbers. Such a scenario is also dangerous: it would create a tense stand-off between nationalists and unionists in Ireland and probably, if it seemed likely to gain Governmental support in Britain, between Dublin and London.

It follows that another key objective must be: to create circumstances which would inhibit a momentum towards integration on the part of Unionist and Tory politicians.

London

Mrs. Thatcher remains the decisive figure. Our information is that the Northern Ireland issue does not figure among her priorities which are now being fixed for this Parliament. We are told that she has a conviction, reinforced in recent years, that every effort of Government to resolve the crisis, only made it worse. By political preference a Unionist, she is more susceptible to influence from Powell and the "integrationist" Tories than the more moderate Prior. Another difficulty, in terms of nationalist desiderata, is that Mrs. Thatcher is extremely unlikely to go back on her word to the Unionists: that does not necessarily mean that she will not change the perceived reality of her commitment, if so persuaded.

A key objective vis-a-vis Mrs. Thatcher must be firstly to secure her interest quickly in action on the Northern Ireland crisis. In identifying appropriate action efforts should be made to find a device whereby she would not be required to do violence to her word.

Mr. Prior admits the alienation and instability problems. While committed to effort towards an initiative next year, he is not inclined to look beyond power-sharing. We find it difficult to believe that Unionists of either the O.U.P. or the D.U.P. would accept power-sharing. We fear, moreover, that power-sharing of itself (if it could be arranged) would not affect the problem of nationalist alienation which requires a tangible Irish element in the structure of public authority in Northern Ireland. Our objective in talks with Mr. Prior has been to try to persuade him of the urgent need for British as well as Irish reasons of stability for a strong Irish dimension in any arrangements for Northern Ireland.

Room for Manoeuvre

In assessing this, a few positive elements should be recalled

- we are told that Mrs. Thatcher trusts the Taoiseach;
- the Anglo-Irish framework (Anglo-Irish Intergovernmental Council etc.) is intact: it must be said that experience hitherto has not demonstrated the capacity of this structure to address the problem in any other than peripheral terms (granted this was the theory of its conception); it is not easy to see how, without a radical departure, it could be used to have a tangible effect on the political circumstances of Northern Ireland;
- the ongoing New Ireland Forum, which may succeed in bringing realism into the nationalist debate and into nationalist expectations: the argument has sometimes been put to the British side to recent months that they should look more to the assessment of the Northern Ireland problem of the Forum than to its proposals for useful common ground; it must be added that on the British side, there will almost certainly be a strong unwillingness to be presented by a fait accompli by the Forum, a situation which would eliminate room for manoeuvre so far as they are concerned and correspondingly increase the pressure (Unionist especially) on them to reject a particular proposal;

/...

- the U.S. dimension: Reagan recently raised the issue with Mrs. Thatcher as a result of an initiative by Speaker O'Neill taken at our request: U.S. Pressure (despite the Grenada crisis) probably remains the only decisive leverage on this issue with Mrs. Thatcher;
- the fact that both leaders probably each has a term of four years ahead.

On the negative side, our Government must face the following difficult dilemma:

- assume, as seems prudent, that Mrs. Thatcher will be in Government for much of the next five years;
- assume that she will not yield on the formal constitutional issue in that time;

The dilemma then is: do we or do we not insist on maintaining all our nationalist cards face up on the table during that time? If so, the inescapable consequence seems to be that we must await a change of political leadership in Britain before a "breakthrough" is conceivable. That implies that we contemplate the end of the SDLP as the last remaining bulwark against Sinn Féin control of nationalism in Northern Ireland quite early on within that period, with all that that implies. Aside altogether from this very difficult issue, another difficult question must be asked: what real evidence is there that another British Administration in such circumstances in four or five years time would be more satisfactory from our point of view?

- We have already in recent weeks seen how Labour, as exemplified by Soley and Flannery, handle their relations in Northern Ireland i.e. principally with Adams and Morrison. Otherwise one could foresee Labour in Government dealing as they did earlier under Rees and Mason - after a similar approach from Wilson, when in Opposition, to the IRA - absolutely on Unionist terms.

Anglo-Irish Intergovernmental Council (AIIC)

Establishment

The decision to establish the Council was taken at the meeting between the Taoiseach and the Prime Minister in London on 6 November, 1981. They were acting on a proposal which was made in one of a number of Joint Studies undertaken by senior officials of the two Governments and which were commissioned by the Taoiseach and the Prime Minister at their meeting in December 1980. These Studies covered possible new institutional structures, citizenship rights, economic co-operation, measures to encourage mutual understanding and security matters.

Purpose

The AIIC was established to provide an overall framework for close bilateral consultation at Head of Government, Ministerial and official levels, on all matters of common concern, with particular reference to the achievement of peace, reconciliation and stability between the two countries.

Structure

The structure of the AIIC is set out in a Joint Memorandum (Appendix I) which was agreed with the British authorities in January 1982.

The AIIC meets at two levels - Ministerial (this includes Heads of Government) and official. At official level the Council comprises a Steering Committee and a Coordinating Committee. The former is chaired by the Secretary to the Government and the British Cabinet Secretary and is intended primarily to prepare for meetings of the Council at Heads of Government level. The Co-ordinating Committee of the Council has the task of monitoring existing cooperation between the two countries and encouraging the development of new areas of cooperation. It reports to the Steering Committee and is chaired on the Irish side by a Department of Foreign Affairs official and by a Cabinet Office official on the British side.

An All-Ireland Court

1. To have any reality as an institution to enforce the law, it is axiomatic that a Court must
 - (a) have its existence founded on operative law;
 - (b) have its 'back up forces' - police, registrars and staff and prison authorities - subject to its authority;
 - (c) have a unified system of law to be enforced.

It is also axiomatic that no one state has the jurisdiction to bring such a court into existence for the whole island of Ireland. Consequently it could come into being only by a joint exercise of jurisdiction by the two States concerned.

2. Such a court could be a single institution in all senses. If e.g., there were to be set up an All Ireland body with Jurisdiction conferred on it by each of the two states to do so, that body could set up an All-Ireland Court and give it the attributes set out at (a), (b) and (c) in para. 1 above. On the Irish side the setting up of such a body and the giving of jurisdiction to it to set up such a court would, of course, require a fundamental amendment of the Constitution. It was such a court which was considered by the Law Enforcement Commission, praised as a concept but rejected as impracticable because it would require amendment of the Irish Constitution which would take too long. (No doubt, the members of the Commission were also aware that the setting up of a body with

jurisdiction to create such a court was by the time of the Commission's Report a political impossibility, but they did not discuss or report on this as it was outside their terms of reference). The Commission also considered the idea of 'Mixed Courts' and did not recommend their institution.

3. What the Commission did not consider was a single institution forming an All-Ireland Court with 'twin' jurisdictions rather than one over-all jurisdiction. It could come into being in the following manner:-

- (a) The Republic would set up a Special Court to try the offences listed in the schedule to the Criminal Law (Jurisdiction) Act, 197 when the act constituting the offence were committed anywhere in the whole island. This is the position under law at present.
- (b) The U.K. would set up the same Court as a U.K. (Northern Ireland) Court having the same jurisdiction.
- (c) That Special Court would consist of six judges, three from each jurisdiction, and a sitting would take place before a bench of three, at least one judge being from each jurisdiction. The Offences Against the State Act, 1939 would need amendment to enable Northern Ireland judges to be appointed members of it.

(d) When the Court sat within one of the jurisdictions its authority over its back-up staff would be conferred on it by the law of that jurisdiction. Similarly, the imposition of penalties imposed by the Court within one of the jurisdictions would be enforced by the authorities of that jurisdiction.

(e) In short, from the point of view of the law of the Republic, the Court would be an Irish Court, enforcing Irish Criminal Law over the whole island. From the U.K. point of view, it would be a U.K. Court, enforcing U.K. criminal law over the whole island of Ireland.

4. As matters of law such a Court would be subjected to the following criticisms:-

(a) Provision would have to be made for appeals from the Court. It would seem that the only practical way in which such provision could be made would be by allowing for an appeal by the normal appeal procedures within whichever jurisdiction the accused was charged unless he opted, on being charged, with trial in the jurisdiction other than that where he was arrested and charged.

(b) Conflicts might arise in relation to differences in the law and practice in relation to evidence in each jurisdiction. These laws are fundamentally the same but divergences resulting largely from decisions of the courts would have to be carefully examined.

(c) The effects of the Constitution on the law applicable in this State would have to be considered. In this connection it should be noted that such a court, not being either the High Court or the Supreme Court created under the Constitution, but being in the same position as the present Special Court could not have the validity of any law having regard to the provisions of the Constitution raised before it. However, what could be raised before it would be such matters as whether the arrest of an accused or the admissibility of a statement made by him accorded with his constitutional rights as defined by decisions of our High and Supreme Court. This would require interpretation of decisions based on the Constitution.

When hearing evidence in the jurisdiction other than that of trial the accused could probably not be compelled to be present. It might be settled by agreement between the states that an accused so moving into the other jurisdiction would be at all times in the custody of the Court and, as such, immune from all legal process. Should he still refuse to be present, I think the opportunity to be present and/or be represented would meet most of the objections but might not be conclusive in a challenge of unfair trial because of the accused's absence from a part of it.

The advantages which such a court would have over the present Special Court with extraterritorial jurisdiction would be:-

- (a) As a mixed North/South Court it would not be subject to the criticisms of partisanship as is the present solely 'South Court'.
- (b) It could hear evidence all over the island as a Court, not as taking evidence on commission, as it were, ^{on} courtesy of a local court in the other jurisdiction, but of its own right, as a court.
- (c) Manifestly, throughout the whole island, it would be a common institution working to protect all sections of the two communities from the common threat - crimes of political terrorism. From the point of view of the British Government this argument is perhaps the most persuasive. It can be argued that the minority in the North will have a genuine belief in this Court which will ultimately assist in the apprehension and conviction of offenders and in the alienation of subversives from the communities from which they come or which they contend they represent.

Tuesday,
This may be for 1/10
next week's meeting.
Meeting of Attorneys General.

London, 21st October, 1983.

1. Having welcomed the Attorney General, and following some general conversation, Sir Michael Havers enquired about the progress of the Shannon extradition case.

The Attorney General explained that, following the making by the District Court of an order for his extradition, Shannon had two separate applications currently before the High Court: an application for his release under the Extradition Act, 1965 on the grounds that the offences were political offences; and an application for an order of certiorari quashing the District Court order on two procedural grounds.

|| This latter would be heard first, next week, and if it was unsuccessful - as was probable - the Extradition Act application would be likely to be heard within a week or two, unless the Certiorari case was appealed to the Supreme Court, in which event the Extradition Act application would be delayed for some weeks.

Sir Michael Havers expressed satisfaction at this time-table.

2. Sir Michael Havers remarked that the Supreme Court's decision in McGlinchey's case represented major progress in the field of Anglo-Irish extradition. He also was most impressed by the judgment of Mr. Justice Keane in McMahon's case (August, 1983), and thought that it contained material which

would be of use to the United Kingdom authorities in cases in the London Courts involving extradition to other countries.

3. The Attorney General outlined the principal provisions of the Criminal Justice Bill, 1983, at the request of Sir Michael Havers, who also asked that a copy be sent to him. [This has since been done.]
4. Sir Michael Havers referred to the possibility of members of the RUC being permitted to question arrested persons in the South (a matter which had been raised by him at a previous meeting also). The Attorney General repeated that he did not think that there was much likelihood of this development. The matter was left at that.
5. Sir Michael Havers remarked that he found himself obliged to charge a number of members of the RUC with murder following the shooting of a fleeing suspect named Grew; the evidence against the police had been so coercive as to leave him with no real choice. While the RUC authorities were not pleased, he hoped that it would in the long term be good for the morale of the Force.

The Attorney General stressed the absolute importance of the minority in Northern Ireland not being given grounds for seeing the RUC as a sectarian Force. If their feeling of alienation from the police was to be counteracted, it was essential that the police be seen to be amenable to the law and that the law should be rigidly enforced against those who transgressed it.

6. The Attorneys agreed that in view of the progress in Shannon's case, other requests which the United Kingdom had held back pending developments in that case might now be set in train. They agreed, however, that it was important to allow a gradual and progressive development by the Courts of the desired approach to the question of what constitutes a political offence. The Attorney General pointed out that if the Irish Courts persisted in the approach evidenced in the McGlinchey case this would represent a significant departure from the traditional approach which, indeed, was still being followed by the British Courts (and the U.S. courts). He pointed to the fact that the incipient approach of the Irish courts has as its closest parallel the developing jurisprudence of Switzerland. Sir Michael Havers agreed, and said that this pointed to the necessity for a slowly-slowly progress.

7. A number of specific cases where requests by the United Kingdom authorities are pending were discussed, and agreement was reached as to the order in which they would be processed.
8. Sir Michael Havers raised the issue of "Supergrass" trials and enquired as to the Dublin reaction. The Attorney General indicated that he was not in a position to indicate the official view but expressed concern that these trials might have the effect of exacerbating the alienation of the minority community.

The atmosphere throughout the discussion was most cordial. The Attorney General was accompanied by Mr. M. Russell and Sir Michael Havers was accompanied by Mr. H. Steel.