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SECRET

Oifig an Aire Gnothai Eachtracha

MEMORANDUM FOR THE INFORMATION OF THE GOVERNMENT

3/ August 1984

Anglo-Irish Exchanges

1. On 9 May the Government gave approval for soundings to be made, without commitment, with the British authorities on proposals put forward by the Minister for Foreign Affairs in a memorandum relating to possible new arrangements for the government of Northern Ireland (copy of memorandum of 9 May as revised by the Government attached). This was done on May 10th. There have been other exchanges since then. The present position is that the British have recently made a counter-proposal to the Irish side.

2. The purpose of the present memorandum is to bring the Government up to date on developments in these central exchanges since the 9th May, particularly in the light of the Taoiseach's meeting with the British Prime Minister of next Monday, September 3rd. Other papers for the information of Ministers have been circulated which deal with:

- Recent developments in Anglo-Irish relations (including the preliminary British response to the Forum Report);
- Fundamental requirements of the Northern minority as ascertained from recent contacts;
- Present state of opinion among Unionists as ascertained from recent contacts;

- Provisional Sinn Fein strategy;
- Recent developments in the RUC.

3. On May 10th the British side rejected as unworkable the Irish proposal of a unitary state. The Irish side then outlined a proposal for a federal or confederal state in the island. This was also rejected by the British side as being unsaleable to a majority in Northern Ireland at this time. The British side stressed that any new arrangements would have to accommodate the clear desire of a majority in Northern Ireland that Northern Ireland should remain within the United Kingdom.

4. The Irish side then proposed a system of joint authority for the government of Northern Ireland in the terms authorised by the Government on May 9th. The British side undertook to consider this proposal and give a response in due course.

5. There was also a detailed discussion of the British requirement that the Irish side "acknowledge the Union" as a quid pro quo for concessions to Irish Government requirements. As instructed, the Irish side conveyed the proposal that the Irish Government would be prepared to repeat the Sunningdale Declaration in relation to the status of Northern Ireland and have that declaration registered with the United Nations. It emerged on May 10th and was confirmed in subsequent bilateral discussions that the British side would not regard the Sunningdale Declaration as effectively meeting their requirement that an acknowledgement of the Union be invulnerable to challenge in the Irish Courts precisely because, as the Irish side was obliged to acknowledge, the defence of the Irish side in the event of a court action, would be (as it was in 1974) to assert that the Declaration had de facto but not de jure force. The view was subsequently conveyed to the British side that the Irish side would not exclude the possibility of amending Articles 2 and 3 of the Irish Constitution in the event that an adequate package of new arrangements for the government of Northern Ireland were available from the British side.

6. In the course of meetings on the 22nd July and the 30th July the British side explained that they had a fundamental objection to one important aspect of the Irish ideas on joint authority as put forward on 11th May. It was the view of the British Government that joint executive decision-making by the Irish and British Governments in Northern Ireland would be a breach of U.K. sovereignty over Northern Ireland.

7. The British side could contemplate the Irish proposals in relation to two of the three tiers of government envisaged by the Irish side i.e.

- the excepted powers (defence, foreign policy, finance) to be matters for consultation as appropriate i.e. the Irish Government could, if it so desired, be consulted on the areas of government covered by these powers;
- the devolved powers (i.e. all powers of government in Northern Ireland other than the excepted and reserved powers) to be devolved to a local power-sharing executive and locally-elected assembly.

8. The British side made a counter-proposal in relation to the tier of government designated the reserved powers in the Irish Government's proposal (security, the courts, questions of identity and human rights, designation of the Executive): the British suggested that in this area the British would accept in the new basic Anglo-Irish Agreement an obligation to consult the Irish Government in regard to decision-making. The British side argued that such a system would effectively give the substance of joint decision-making to the Irish side as any failure by the British to take account of Irish views could precipitate a crisis in which the Irish would have the power "of nuclear impact" of walking out of the arrangement.

9. The British further said that they had open minds as to the institutionalisation of the system of consultation. They suggested three possibilities which, they said, were not mutually exclusive:

- (a) through the development of the Anglo-Irish Intergovernmental Council system;
- (b) through a new North-South system of consultation;
- (c) through a resident Irish presence in Northern Ireland.

10. In relation to the security system, the British said that they could not for political and practical reasons contemplate a system of joint or alternating command involving their own and our security forces operating in Northern Ireland. Instead they suggested a Joint Security Commission comprising possibly a British and an Irish Minister in which the security chiefs of both sides would have an advisory role. For the moment they could not envisage an active Irish security presence in Northern Ireland but they suggested the reciprocal attachment of liaison officers of the Garda Siochana and the RUC to each other's forces North and South (i.e. Garda liaison officers with the RUC in Northern Ireland and vice versa).

11. By way of preliminary response the Irish side said that they did not regard the British suggestions for a new system of Anglo-Irish consultation for the Government of Northern Ireland as being an adequate quid pro quo for a change in our constitution. The Irish side added, primarily for reasons intrinsic to our appreciation of the requirements of the situation in Northern Ireland but also for tactical reasons, that the British proposals in relation to security were totally inadequate to deal with the problem of alienation among nationalists. Detailed arguments were advanced to support this reasoning and the British side said these would be considered seriously.

12. The above 11 paragraphs are a summary of the exchanges that have taken place since May 9th. The following paragraphs set out the view of the Minister for Foreign Affairs of the present state of the exchanges in the light of:

- the requirements of the situation in Northern Ireland;
- the political viability of a package such as might now be available;
- the room for manoeuvre of both Governments in relation to procedure i.e. the problem of moving these secret consultations into the public domain.

13. The Minister for Foreign Affairs has circulated a number of papers for the information of Ministers on aspects of the present situation in Northern Ireland. Following, in summary, are the main conclusions of these papers:

- in a major development, the British have for the first time publicly acknowledged that the Irish Government has a responsibility and a role in relation to the minority in Northern Ireland;
- the predominant concern of responsible nationalist opinion in Northern Ireland is to replace the present security system with a new system with which they can identify within the framework of a workable political framework;
- nationalist opinion in Northern Ireland is remarkably realistic about what can be attained in the short term;
- commendable efforts have been made in recent years to improve the effectiveness and discipline of the RUC; aspects of their performance over the past two years have given serious cause for concern to the Irish

Government in terms of recruitment, training, organisation and political discipline; the basic position has not changed: the RUC, however perfected, would continue to be an "alien" security system for a very significant number of nationalists;

- there is a promising opening in opinion in the Official Unionist Party which reflects a stronger movement among grass roots supporters of both Unionist parties;
- Unionists, without some significant public shift of position by London, would be unable themselves to move to a more positive attitude vis-a-vis nationalists in terms of what the situation requires if there is to be consensus;
- the Provisionals' strategy continues to be (i) to defeat the SDLP in local elections next May with a view to using the nationalist mandate which they would thereby spuriously claim for violence (ii) to create a situation of widespread conflict in the North into which they would hope to suck this State, (iii) thus "coming to power in Ireland" (Morrison); it would be a serious mistake to be misled into complacency by Hume's defeat of Morrison in the European Elections.

14. The Minister for Foreign Affairs suggests that the Government should now give serious consideration to the latest British ideas with a view to seeing:

- whether there could be any system for implementing them which might be capable of reversing the tide of nationalist alienation in Northern Ireland;
- whether such a system or systems would be politically adequate to convince public opinion in this State of the desirability of change in Arts. 2 and 3 of the Irish Constitution and, if so, what changes should be made.

15. In summary, the Minister's memorandum of 9 May as approved by the government, envisaged three tiers of government for Northern Ireland which would be dealt with as follows:

<u>Powers</u>	<u>Irish Government Role</u>
<u>Excepted Powers:</u> Foreign Affairs, Defence, Finance	Right to be consulted on any issues we care to be consulted about
<u>Reserved Powers:</u> Nomination of Executive, Security, Courts, Issues of Identity (flags and emblems, placenames, language etc.), Broadcasting, Posts & Telegraphs	Anglo-Irish Joint Authority
<u>Devolved Powers:</u> Broadly, the remaining powers of Government	None (after nomination of Executive)

In reply, the British have proposed one fundamental change of substance and none of structure, i.e. they have proposed that instead of joint Anglo-Irish decision-making in relation to the reserved powers there should be joint consultation, based on a Treaty obligation on Britain to consult Dublin on that specific set of issues in all political decision-making. In other words, the Irish Government would have a right to consultation in relation to the excepted powers and the British Government would have an obligation to consult the Irish Government in relation to the reserved powers.

16. The distinction between:

- the right of the Irish Government to seek consultation in relation to the excepted powers and
- the obligation on the British to consult Dublin in relation to the reserved powers

can be viewed at three levels. Firstly, in relation to the reserved powers, there would be an obligation on the British to consult in every case of political decision-making: the fact that the legal obligation is on them and that it is universal in application within the reserved powers puts the Irish Government in a stronger role both in terms of perception of nationalists (i.e. the British have conceded not alone a right to Dublin but an obligation on themselves to observe and to apply that right automatically in every case) and also, one could argue, in practical cases of potential disagreement i.e. the British could not start to prepare their decisions, as they would do in the case of the excepted powers, without bringing in the Irish Government.

Secondly, the issues within the excepted powers on which we would exercise our right to seek consultations would in practice presumably relate principally to cooperation and coordination on North-South economic policy, e.g. planning and taxation, as well as some Community issues e.g. agriculture. Within this area there would be scope for developing practical North/South cooperation. We would presumably not seek consultation in relation to issues within the excepted powers on which we would not wish to see North/South cooperation extended e.g. defence. On the other hand, we would in relation to the reserved powers, be dealing primarily with that range of issues which have been a perennial source of Northern nationalist grievance: as such we would wish to be seen to be consulted on the full range.

Thirdly, the Secretary of State would continue, within the British Government system, to have (as he has today and as it is envisaged that he would continue to have under the Northern Ireland Assembly Act), a very high degree of autonomy in the exercise of Governmental authority in the area we have designated the reserved powers. Thus, the process of consultation would take place swiftly, directly and in a pervasive way i.e. without consultation back and forward to

London or, perhaps, Dublin. This would be much less the case in the area of the excepted powers where the need to involve London and Dublin Departments would often be considerable.

Thus, the process of consultation within the reserved powers - because of its automaticity and obligatory character, its pervasiveness, its directness and immediacy and because the issues concerned are all of those most directly linked to minority grievances - would have much more of the character of joint authority than the more selective and elaborate process involving the excepted powers.

17. It is possible to envisage a model or models which might embody the present British proposals. These proposals have been put to the Irish side only in outline. The following ideas represent a possible version which the Irish side might seek to obtain in further talks but which is compatible with the British approach:

- An Anglo-Irish Ministerial Commission for Northern Ireland within the Anglo-Irish Intergovernmental Council legally based on an Anglo-Irish Agreement;
- The two Governments, through the Agreement, would
 - (a) each solemnly recognise and guarantee the equal validity of both the nationalist and unionist identities in [Northern] Ireland;
 - (b) each guarantee that both identities must have satisfactory, secure and durable political, administrative and political/symbolic expression;
 - (c) together establish a framework for consultation on aspects of the government of Northern Ireland through an Anglo-Irish Ministerial Commission for Northern Ireland;

- (d) the framework for the new arrangements should be such that, on the one hand, they should be durable and, on the other hand, that they should provide for the possibility of Irish unity;
 - (e) the Commission would be subsidiary to the Anglo-Irish Intergovernmental Council.
- Certain excepted powers would be reserved to Britain as the sovereign power. These would include defence, foreign policy and finance. It would be provided in the Agreement that
 - the excepted areas of responsibility could, if the Irish side wished, be a matter for consultation within the Anglo-Irish Commission for Northern Ireland.
 - The Commission would be an inter-Governmental body comprising representatives of the two Governments with one Minister of Cabinet rank responsible on a full-time basis in each Government.
 - The Irish Minister could have offices in Belfast and Dublin with sub-offices at various points throughout nationalist Northern Ireland. Dublin's establishments in Northern Ireland would fly the tricolour.
 - A number of areas would be matters reserved to the British Minister but requiring consultation within the Commission: nomination of a power-sharing Northern Ireland Executive; security; courts; certain issues of identity e.g. flags and emblems, language, placenames etc.; broadcasting; posts and telecommunications. Any or all of the reserved powers could, by agreement between the two Governments, be transferred to the Executive.

- There would be an elected Assembly in Northern Ireland which would be a legislative body. There would also be an Executive which would be appointed by the British Secretary of State following consultation with the Irish Minister.
- The Assembly and the Executive would together operate the full range of the remaining devolved powers, subject to a series of checks and balances;
- There would be an All-Ireland Court dealing with a range of matters, appointed jointly by the Irish Government and the Northern Ireland Executive. There would also be a North-South Law Commission charged with the harmonisation of the criminal law. (Note: these issues have not yet been discussed in any detail with the British; a further memorandum will be put to the Government in due course on which the Attorney General will be consulted.)
- A Bill of Rights would be enacted for Northern Ireland and/or the European Convention on Human Rights would be enacted in the North or both North and South.
(Note: these issues have not yet been discussed in any detail with the British; a further memorandum will be put to the Government in due course on which the Attorney General will be consulted.)
- There would be a Parliamentary Tier involving at a minimum the Dail and the House of Commons but not precluding representation from the Assembly; conceivably the Anglo-Irish Intergovernmental Council and its subsidiary Anglo-Irish Ministerial Commission for Northern Ireland could "report" to the Parliamentary Tier; alternatively the Intergovernmental Council could "report" to the Tier while the Ministerial Commission could "report" jointly to the Assembly and separately to Westminster and the Dail; these are questions yet to be researched; there has not yet been any discussion of substance with the British.

18. The security system remains the most difficult and, in terms of ending nationalist alienation, the most important issue. It is clear that, at earlier stages of the current exchanges, the British underestimated its centrality to any progress and misunderstood its significance. They mistook the problem of securing nationalist political support for the security system for the quite different problem of improving security cooperation. There are now signs that they are beginning to realise the nature of the problem.

19. The Minister for Foreign Affairs believes that political courage is required in this area by both Governments, courage of the order of that displayed in an equally if not more troubled situation by the Government of this State in 1922 when the Government established an unarmed police force. That Government must have been strongly tempted to establish a force like today's RUC whose only contact with alienated sections of opinion would have been that of heavily armed personnel using military transport, a form of contact which, in the divided society of today's Northern Ireland, can only perpetuate mutual distrust between the police and the section of the community which distrusts the police and is distrusted by them.

20. The Minister for Foreign Affairs believes that no political arrangements, however seemingly advantageous to the minority, would reverse alienation if they had to depend on the present security system to provide law and order in nationalist "ghetto" areas. It is necessary that in those areas the present security system be withdrawn and that it be replaced by a new system based on the nationalist community.

21. The present state of play in Anglo-Irish exchanges is that the British are considering the following proposal:

- The disarming of the RUC and its deployment principally in Unionist areas; the establishment of a new unarmed

police force based in the nationalist population to be deployed principally in nationalist areas; the establishment of a new third force based on both of these forces could be armed and deployed to deal with terrorist crime; during a transition period while the new forces are being recruited and trained, Irish forces, both military and police, to be deployed in nationalist areas.

The Minister believes that the events of the week of August 12th have helped to bring home to the British the need for a fundamental rethink of this problem.

22. The Minister for Foreign Affairs believes that it is necessary for the British to formulate a reaction to the Irish proposals in the security area before asking the Government to take a definitive position on the latest set of British ideas. Nevertheless, he feels it might be useful to list a number of the implications of those proposals in the light of the Taoiseach's talks with the British Prime Minister next Monday, September 3rd.

23. The British proposals, if for example implemented along the basis of the possible model outlined above in para. 15 and including an adequate security system, would have the following advantageous features from a nationalist point of view:

- a highly visible Dublin presence within Northern Ireland, physically at various points throughout nationalist Northern Ireland and institutionally at the heart of the process of government of Northern Ireland - with an effective veto on a major area of the government of Northern Ireland and a considerable say on other areas of Government;
- Dublin's political presence would be irreversible and capable of considerable development e.g. through taking up economic issues on which the interests of North and

South coincide more closely than those of the North and Britain (e.g. agriculture) through the process of consultation;

- a full nationalist role in internal decision-making through the power-sharing Executive;
- a high prospect of stability in nationalist areas fostered through new security and judicial systems with a bill of rights;
- the creation of circumstances in which U.S. and E.C. fostered industrial investment might begin to flow, thereby consolidating the process of stability;
- reversal of the Provisionals' threat to the stability of North and South;
- a fundamental improvement in Anglo-Irish relations with the removal of an element of instability in Southern society which in present economic circumstances, fed by continuing Northern instability, could otherwise develop dangerously.

24. There are two major political objections to the package which would need to be considered. Firstly, the objection that there is not "enough" in it for nationalists in Northern Ireland i.e. that it does not immediately or inevitably provide for British withdrawal or Irish unity. The effective answer to this would, of course, be the reaction of the nationalists themselves and particularly their constitutional leaders.

25. The second major objection would be that the package does not contain "enough" to meet likely Opposition objections to any change in Articles 2 and 3 of the Constitution. In this instance the Government could with advantage base its case on the need to improve the lot of Northern nationalists now rather than await the day when a majority emerges within the North in

favour of Irish unity. (The Forum Report accepts the need for such a majority to exist in order that Irish unity be established.) In other words, improving the situation of disadvantaged people now matters more than abstract ideas. There are other powerful arguments that could be used to appeal to public opinion:

- much would depend on the form of change of Articles 2 and 3 e.g. formulae from the Forum Report could be substituted for the present language; the people could be expected to give positive support to a formula which strikingly encompassed their own hopes and intentions rather than to see the exercise merely as a retreat from the status quo in the process of an Anglo-Irish balancing act;
- the package would in fact (if an adequate security component were added) meet all the specific "requirements" laid down by the Forum Report (Chapter 5, para. 2 - text attached);
- a major factor would be the attitude taken by the leaders of constitutional nationalism in Northern Ireland itself; assuming that the Government would not agree to a package without the specific support of the leadership of the SDLP, the Government would be in a powerful position to invoke the supportive position of that leadership in the debate.

26. It would be a matter for the Attorney General to advise the Government on constitutional and legal aspects of any possible change in the texts of Articles 2 and 3 of the Constitution. The Minister for Foreign Affairs will in due course, in consultation with the Attorney General, propose a text which might be considered. To a certain extent the degree of change in the present text might reflect the extent to which the British will be able to move on their side. Broadly the

Minister would have a preference for a new text which would incorporate the following elements:

- reaffirmation of the legitimate aspiration of a majority of the people of Ireland to Irish unity to be achieved peacefully and only peacefully and also by agreement of the people of the North and of the people of the South (the language of the Forum Report);
- acknowledgement of the rights and equal validity of the two main traditions in the island of Ireland on the lines of, and in the language of, the Forum Report;
- reaffirmation of the commitment of the people of the State to stability in the island and to peace and friendship between all Irish traditions.

27. In accordance with the Government's decision of 9 May, the Irish side proposed to the British that the two Governments should adopt a statement of principles based on the Framework for a New Ireland as outlined in paragraphs 1 and 2 of Chapter 5 of the Forum Report (see text attached). This proposal is under consideration by the British side but they have explained that the British Prime Minister would not be prepared to begin the negotiation of such a statement until she was clear as to the likely substance of an agreement between the two Governments. This seems to the Minister for Foreign Affairs to be a reasonable reaction. The Irish side proposed this idea both in order to associate the British Government, as it were, with the central thrust of the approach of the Forum and in order to create a new situation that would be based on a joint position taken by the two Governments to which the other parties concerned might be able to respond positively or to which they would at least have difficulty in responding negatively.

28. The Minister for Foreign Affairs believes it would be important to involve the main parties in Northern Ireland in a conference if this were possible. This could be particularly advantageous in the event of a referendum. There are indications that the British side would in principle favour such an approach. Both sides are, however, well aware that there would be difficulties in getting the agreement of Unionists to attend a conference on the future of Northern Ireland which would involve the Irish Government.