

NATIONAL ARCHIVES

IRELAND



Reference Code:	2014/105/789
Creation Date(s):	10 October 1984
Extent and medium:	16 pages
Creator(s):	Department of the Taoiseach
Access Conditions:	Open
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Memorandum for Government

10 October 1984

Possible Anglo-Irish Initiative on Northern Ireland

1. The Taoiseach seeks the approval of the Government for the continuance of discussions on Northern Ireland on the lines indicated in this memorandum.
2. Exchanges have taken place both in London and in Dublin over a period of months between Irish and British officials with a view to exploring the possibility of an Anglo-Irish initiative on Northern Ireland. This paper is intended to provide an introduction to the present state of the dialogue.
3. Those involved on the Irish side are the Secretary to the Government, the Secretary of the Department of Foreign Affairs, the Ambassador in London and the Assistant Secretary in charge of Anglo-Irish relations in the Department of Foreign Affairs. On the British side those involved are the Secretary to the Cabinet, Sir Robert Armstrong, the Deputy Under-Secretary at the Foreign and Commonwealth Office (until recently Deputy Secretary to the Cabinet) David Goodall, and the British Ambassador in Dublin.
4. The Government have been informed as the exchanges have developed and have given both general and specific instructions to the Irish participants. The Taoiseach, the Tanaiste and the Minister for Foreign Affairs have directed the Irish side in close detail.
5. In London the Cabinet have received two reports and have approved the continuation of the exchanges. British Ministers directly instructing the British side are the Prime Minister, the Foreign Secretary and the Secretary of State for Northern Ireland.

6. The Taoiseach and the Prime Minister have discussed the progress of the talks and there have also been important exchanges between the Minister for Foreign Affairs and the former Secretary of State for Northern Ireland and the Foreign Secretary. The main effort has hitherto, with the approval of political leaders on both sides, been concentrated at the official level.

7. The outline of a possible "package" has now emerged on both sides. Both sides have now included legal and security experts in the detail of their work, (on our side the Secretary of the Department of Justice, the Commissioner, the Chief of Staff and Mr Declan Quigley, who has just retired as Senior Legal Assistant in the AG's Office). It is proposed that the two sides will exchange papers on topics within the next ten days. This will be followed immediately by a two-day meeting involving the existing participants and possibly a few others. Other meeting(s) are likely to take place shortly thereafter with a view to finalising the shape and content of a possible "package" for consideration by the Heads of Government at their Summit meeting on 19 November. Both sides have under consideration the possibility of issuing a general statement of Objectives or Principles on 19 November while holding the content of the "package" over for presentation at a possible conference of the Governments and the Northern Ireland parties (and possibly, though not probably, Opposition parties in London and Dublin) to be held very shortly thereafter.

8. Confidentiality

The exchanges hitherto have been extremely restricted. Outside the Government and the Irish participants mentioned above, the Taoiseach has kept the Leader of the SDLP generally informed. On the British side, those privy to the exchanges, in addition to the officials named above, include a Deputy Secretary at the Cabinet Office, Cartledge, four officials of the N.I.O. - Andrew, the Permanent Secretary, and Brennan, Burns and Bourne (Security), the three Under-Secretaries. With the possible exception of a recent report in the Belfast Newsletter, there

have been no known "leaks" from the officials involved on either side although Mr Prior has on a number of occasions hinted broadly at some of the issues involved. It is essential that there be no unauthorised leaks from the Irish side for domestic reasons, for reasons of stability in Northern Ireland and for reasons of trust in Anglo-Irish relations. The Taoiseach has directed that he and the Minister(s) concerned must personally approve the briefing of any official or Garda or Army official in every single case on any aspect of the exchanges.

9. Nature of Exchanges

It must be emphasised that each side accepts that the exchanges to date have taken place without the commitment of either Government. This key principle has been confirmed repeatedly at Ministerial (including Prime Ministerial) and official levels. The Taoiseach has also noted - and this has been confirmed by the British side - that the two sides have explored each others ideas, not in the classic manner of competitive bargaining, but rather through a process involving mutual education. Substantial progress, in the sense of a meeting of minds, has been achieved. It will remain, however, for the two Governments to take all the basic decisions on the feasibility of the outline and specific detail of "package". This will presumably be addressed both in London and in Dublin before 19 November.

10. Common Approach

The Irish side, on instructions, put successively to the British side each of the three illustrative options described in the Forum Report. When the unitary state option was rejected, the federal/confederal model was proposed. When the latter was rejected the joint authority model was proposed. This too was rejected.

11. It is important to repeat here that the three options are described in the Report as three possible ways of accommodating the central criteria of the Report which are the Realities and Requirements set out in Chapter 5, paras. 1 and 2. (These paragraphs constitute the only formal proposals of the Report.) The Report expressed an openness to consider other ideas that might lead to progress.

12. The analysis of the problem of Northern Ireland put forward by the Irish side was, in a sense, an elucidation of the Realities and Requirements. At this level a good deal of common ground was found with the British side, most notably on the need to reverse the alienation of a growing section of the minority in Northern Ireland from the system of public authority (the State as it is experienced by the minority at all levels in Northern Ireland). While it is agreed that there is an acute and extremely difficult problem in the area of security, it is also agreed that any solution to work must be based on an overall political framework and must include a considerable political element. The Irish analysis is that, while the existing structures in Northern Ireland, provide institutional protection and expression for the unionist identity, they fail to do so for the nationalist identity.

13. Some of the general principles which govern the thinking on the British side were set out by Prior in his speech - which had Cabinet approval - on the Forum Report on 2 July. These include an acknowledgement of the problem of alienation including alienation from the security forces and the need to overcome alienation, the right of the Irish Government to speak on behalf of the Northern nationalists (an unprecedented acknowledgement), the principle that unionists do not have a veto on the manner in which Northern Ireland will be governed within the U.K. and acceptance that it would now be more dangerous to do nothing than to do something.

14. Both sides, accepting that "alienation" is the greatest single problem, also cautiously believe that a degree of new realism is emerging on both sides of the community in the North.

15. In general, and put rather simplistically, the British strategy would seem to be to find a structure which, while reassuring unionists about their position within the U.K., would at the same time seek, through a series of institutional devices, to reassure the nationalists in giving them for the first time institutional expression and protection of their Irish identity. In one version, their approach would be to take from the unionists nothing that they are entitled to feel is theirs by right or by necessity, while for the first time giving to the nationalist side what they have hitherto lacked in institutional terms covering most of the levels of the exercise of public authority.

16. The British side also accept that it is probably necessary to be ready to contemplate structures which have no precedent anywhere if an initiative is to work.

17. In that sense the approach is similar on both sides.

18. It must be noted:

(a) that the Realities and Requirements section of the Forum Report does not demand either Irish unity or the withdrawal of the "guarantee" (it confines its criticism to the manner of practical application of the "guarantee" - Chapter 5.1.4); indeed the same section specifically requires the consent of the North for the achievement of unity;

(b) that the emphasis of ministerial speeches over the past year has been on the need to reverse alienation among Northern nationalists and to end their "nightmare", rather than to demand Irish unity as the only means to progress in the short term.

19. The Emerging "Package"

The "package" contains a number of elements which will be described briefly in the following paragraphs. The success or

failure of a possible initiative will depend to a critical degree on the political coherence and interdependence of all the elements of the "package". This principle will have to be kept to the fore in any work on developing these various elements.

20. The package would comprise the following elements:

1. Sovereignty over Northern Ireland remains with Westminster: there would be arrangements for consultation if we so desired on the "Westminster powers".
2. An institutional "Involvement" for the Irish Government in certain key areas of the government of Northern Ireland through an Anglo-Irish Ministerial Commission for Northern Ireland.
3. An elected Assembly and Power-Sharing Executive.
4. A Common Law Commission.
5. An All-Ireland Court.
6. A Bill of Rights.
7. A Joint Security Commission.
8. A new security system.
- 9 A Parliamentary Tier.

21. On our side: we would amend Articles 2 and 3 of the Constitution to withdraw what the British call the "territorial claim".

22. Procedurally, the "package" would be incorporated in a formal Anglo-Irish Agreement which might be registered with the U.N. It will be necessary to develop ideas in this Agreement:

its form and content and its possible legal implications. It is not expected that it would have constitutional implications

23. The Immediate Next Stage

It is agreed between the two sides to meet early next week to develop discussion on the topics outlined in paragraphs 19 and 21 and also to discuss the possible form and content of a statement of objectives or principles which might be issued by the two sides to launch the discussion.

On security it was agreed that each side should consult experts and perhaps bring experts with them to the next meeting.

24. There follow brief summary notes on some of the major elements in the "package" as it is emerging.

25. The "Westminster Powers"

Basically: foreign affairs, external defence and finance. These would remain "at Westminster". It would be provided that the Irish Government could, if it wished, seek consultation on these matters. In some cases e.g. CAP in EC policy it would be desirable from the unionist viewpoint that the Irish Government should seek consultations (this is implied positively in the DUP document published last week). Other issues of practical interest would be overall economic, including fiscal (to reduce smuggling) policy and allocation of resources between sectors (e.g. industrialisation).

26. Ministerial Commission for Northern Ireland

A Commission would be established within the framework of the existing Anglo-Irish Intergovernmental Council (est. November 1981) to provide for an "involvement" by the Irish Government in the government of Northern Ireland. Potentially the range of issues involved would include all issues now handled under "Direct Rule" other than the "Westminster powers". There would be institutionalised (based

on the formal Anglo-Irish Agreement) and obligatory consultation of the Irish Government on all decisions in this area.

27. The process of consultation would be carried out directly with an Irish representative, probably a senior Minister, who would have an office flying the tricolour with a resident secretariat in Belfast. Politically the viability of the system would depend on the commitment of both Governments to make it work and that would have to be specifically included in the Agreement. The Irish side would retain the capacity to withdraw from the system if it felt necessary.

28. The Agreement would provide for the establishment of an Assembly (the existing Assembly might suffice) and a power-sharing Executive. In the event of an Executive being appointed the range of issues subject to the Ministerial Commission would be limited to those issues for the time being not devolved to the Assembly. Minimally those issues would include:

- nomination of the Executive;
- issues of identity e.g. flags, culture, language, placenames;
- human rights;
- aspects of the system of justice;
- broadcasting;
- security;

(Note: a special system of decision-making is being sought by the Irish side in relation to security (see under para. 38 below).

29. Assembly and Executive

The intention would be that the provision that the Assembly and Executive powers would be exercised by the Secretary of State for Northern Ireland, with the direct involvement of the Irish Minister unless an Executive were formed, would constitute a strong incentive to unionists to serve on the Executive thereby eliminating the Ministerial Commission as such from certain areas of government. Those areas would be governed through a power-sharing executive and thus the nationalist interest (the SDLP) would play a full executive role in decision-making.

30. The Irish Government has yet to consider the form of power-sharing Executive and the checks and balances in the Assembly voting-system that it would wish to see. At an earlier time, and in different circumstances, the Government favoured a non-boycottable system whereby the Secretary of State would himself be Chief Executive nominating (now in consultation with the Irish Minister) representatives from both sides of the community to the Executive and, in those cases where individuals refused to serve, his place being taken by a British junior minister (perhaps now also possibly an Irish junior minister). At an earlier stage a 70% vote in the Assembly was felt necessary for certain decisions.

31. An advantage of having the Secretary of State directly involved in the Executive would be that there would thus be an existing institutional channel to handle the many issues of North-South interest which would come within the purview both of the Executive and the Assembly.

32. Common Law Commission

This would be modelled in the post-Sunningdale Commission. It would be mandated to harmonise the criminal law North and South. The British had envisaged that it should also be mandated to set up the Joint Court. The Irish side argued that the Court would need to be established immediately in order to deal with the alienation problem. This is now being considered by the British.

33. Joint Court

The Attorney General advises that this can be set up on our side without constitutional change. The British are investigating the possibility that legislative change would be required to have judges from outside their jurisdiction, themselves not appointed by the Queen, sitting on the bench in their jurisdiction. The British side have also indicated that Lowry is, to their knowledge, opposed. They may need to seek to win him and the Northern Ireland judiciary over.

34. The question has yet to be fully considered whether there should from the outset be a single court with its own appellate division, a court which would deal with, not alone terrorism, but also human rights issues, thus removing from the Court the aura of repression. There are political attractions here but the institution of such a court would require extensive constitutional change. It is possible that the need to change the Constitution to create such a court, itself attractive to nationalist opinion, could if tested on the same day as the changes in Articles 2 and 3 add to the positive reasons for voting for all the amendments. On the other hand, it may not be practicable to contemplate such a fundamental change in the immediate future. The signs are that the British would want to approach this more slowly, if at all. An alternative approach might be to set up the joint court immediately and mandate the Law Commission to set up the single court within a specific period e.g. a year.

35. Bill of Rights

This proposal is publicly favoured, not alone by the SDLP and all human rights activists in the North, but even by the OUP and the DUP as well as the Alliance Party. Most would seem to be prepared to have the European Convention brought into the domestic law of Northern Ireland.

36. It would seem that, in the event of the establishment of a single court dealing with not alone terrorism but also human rights, it would be desirable to have the same human rights regime, in fact the same charter, in both parts of Ireland. It is understood that there might be objections by the Roman Catholic Church to the introduction of the Convention into domestic law in the South.

37. A Joint Security Commission

The Commission would, it seems agreed, meet within the Ministerial Commission for Northern Ireland. The two Ministers would be assisted by security advisers (administrative and professional). The British are considering the following proposals and the first indications are that they would not be opposed:

- that the Commission would appoint the security chief(s);
- that the Commission would decide and lay down for the security services guidelines for security operational policy.

38. The British view seems to be that for operational purposes the security services should be, in practice and indeed in theory, autonomous.

39. The British accept that it would be necessary to have a permanent operating secretariat for the Commission with a permanent Dublin presence within it.

40. A question to be considered by our side is whether we would wish to see Irish military as well as Garda advisers on the staff of the Commission. Presumably the answer would be "Yes". We do not yet know how the British would view this.

41. The Security System

This remains the most difficult question. In the discussions it appeared at an earlier stage that in this area the primary

British concern was to establish a more efficient system of cooperation while the Irish concern was to have a system of security for the first time on the ground in Northern Ireland which, in areas of nationalist concentration in particular, would be acceptable to the nationalist people. Recently the British have given evidence that they understand and take on board this Irish concern. Thus they have talked recently of approaching the problem of policing at two levels. Firstly, in relation to terrorist crime, they have talked of having special units possibly "joint squads" of RUC and Garda personnel operating in certain areas including possibly cross-border. (Note: they have been told repeatedly and insistently that a cross-border band of territory for joint operations is both for security and political reasons "not on"; the Taoiseach so told the Prime Minister at their recent meeting). The intention, they say, would be to reduce the "obloquy" with which RUC activities in this area are viewed by nationalists. While these suggestions seem to have little attraction, we have not formally rejected them at this stage. Secondly, they now see the need to create a dimension of community policing but they feel this must be within the RUC framework. They say that it could not be established overnight and that, in practice, the Joint Security Commission should be publicly mandated to establish within the RUC a system of local community policing within a certain period. (Note: they could envisage the secondment of officers from the Garda to serve for a period in community policing.)

42. The Irish side, on instructions, put forward the notion of a three-level system: the existing RUC disarmed to patrol those areas predominantly unionist; a new force also unarmed based on the nationalist community to patrol the nationalist areas; a third force drawn from the first two, but armed, to deal with terrorist crime. The British reaction was that it would be impracticable to try to have unarmed police in present circumstances in Northern Ireland and, moreover, that they felt it important to deal with the situation from within the RUC, which could be restructured perhaps so as to attract large numbers of Catholic recruits in the circumstances of the new overall political arrangements.

43. The problem of the UDR has not yet been dealt with but the British are aware of our view that the UDR should preferably be stood down. The question has been raised within our own side as to whether one might consider having separate Catholic units of the UDR perhaps officered by our own Army officers seconded for the purpose, but this is seen as creating a danger of armed sectarian confrontation between Catholic and Protestant units of the UDR, and has not been broached with the British.

44. There is the related and very difficult question of military back-up for the police. The British have been told that we would be prepared, if necessary, to consider deploying our own forces in the North for this purpose. It must be said that they do not now appear to be attracted by this suggestion. The problem remains, however, and must be faced, that if we can agree a system of policing which would in our view reduce the alienation of young Catholics in particular from the police, the question would remain as to what sort of military force to back the civil powers would be acceptable if required.

45 Articles 2 and 3

We will not consult the British about the content of any possible amendments here. We have limited ourselves to indicating that our thinking at present that any change we might contemplate ^{we} could ⁱⁿ preclude the following elements:

- Aspiration to unity;
- Abjuration of violence;
- Acceptance of the principle of consent.

46. In this area it would seem desirable to use the language of the Forum Report as far as possible and it is useful that these three elements are asserted as principles in the course of the Realities and Requirements section of the Forum Report.

47. Should the Government decide to go ahead with amending these Articles (and so far as Mrs Thatcher and her Government are concerned nothing can be done otherwise), it would be essential to bring the constitutional nationalists of the North along, in effect the great bulk of the SDLP, with us so as to assist in the ~~creation~~ ^{a favourable evolution of} of the necessary climate for public opinion in the South. It would seem that the Government should in those circumstances assert the primacy of their concern to improve the actual political situation of the nationalists of the North rather than merely to assert goals which are for the foreseeable future unattainable because the consent of the people of the North would be required (Forum Report) and is now not available, while the Northern nationalists continue to suffer deprivation of any expression of their identity. There is reason to believe that recognition has been growing amongst constitutional nationalists both of the realistic limits to political progress that exist at the present time and of the likely need to offer to unionist opinion the reassurance of a modification of Articles 2 and 3 as the necessary price of securing progress within these limits.

Department of Foreign Affairs
10 October 1984

See Appendix.

Appendix

Update on Northern Ireland Nationalists' Attitudes

1. The Government were informed on 31 August 1984 of the minimal requirements of responsible leaders of the Northern Ireland nationalist community. Essentially these are focussed on the need for a new security system within a new political framework. Several of those contacted also saw the need for an amnesty, at least a partial amnesty, for some of those in prison. The political framework should include a strong role for Dublin and provide for the Irish identity of nationalists to be institutionally expressed.

2. Subsequent contacts with SDLP politicians have shown that there is considerable realism developing in that party as to what might be feasible and as to what might be necessary. Rather significantly some of the "greenest" among them are prepared to concede in private that Irish unity is not on, that what may be feasible would fall a good deal short of that and that it may be necessary to change Articles 2 and 3 of our Constitution to secure it.

3. The efforts of this Irish Government on behalf of members of the Northern minority have created a feeling of confidence in Dublin on the part of the minority such as has not existed for many years. Bishop Cahal Daly of Belfast has told us in recent days that the efforts of the Minister in this regard are having a direct impact and turning people away from Sinn Fein. This "campaign" should, in the Minister's view, be maintained strongly, for intrinsic reasons and also because the confidence

of the Northern minority in the Government will be essential if we are to proceed with an initiative on the lines now being contemplated.

Department of Foreign Affairs

10 October 1984