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Oifig an Taoisigh

SECRET

DRAFT

30 January, 1985.

Memorandum for the Government

Anglo-Irish Exchanges

1. The Taoiseach wishes to bring to the attention of the Government two important developments in relation to Northern Ireland:

- A formal British proposal to the Irish Government in relation to a possible role for the Irish Government in future arrangements for Northern Ireland.
- Developments in relation to devolution.

British Proposal

2. British officials recently handed over a formal British Proposal outlining a possible role for the Irish Government in future arrangements. Copy of the British Proposal is attached. This text must be treated as a secret document.

3. The key feature of the British Proposal is that it was made with the full commitment of the British Prime Minister. All documents hitherto exchanged between the two sides have not engaged either Government. The present document is thus the first formal offer to be transmitted by either side to the

other. It is understood that it is the product of several discussions between Thatcher, Howe and Hurd.

4. The British offer is not conditional on a change in the Irish Constitution.

5. The British side said that this offer represented an attempt to "marry" the less ambitious and the more ambitious approaches which had been discussed among British Ministers (and which were put to Irish Ministers at Chequers). They stressed that it would be up to the Irish side to make suggestions to add to the items in the British text or to adjust the content of the various items envisaged. They described the text as a framework on which to build "from the bottom up". They said that the Prime Minister was opposed to a framework which would involve building "from the top down" and advised strongly against taking that approach. In preliminary comments on the text the Irish side stressed its probable inadequacy and the fact that the Irish side were speaking without commitment and without instructions.

6. The British repeatedly stressed the importance of the phrase "other topics might be added by agreement" in paragraph 1 of their Proposal, saying that this governed each paragraph of the document and not just the first paragraph

7. The Irish side said that it would be desirable, particularly in terms of presentation, if "economic issues" could be added to the list from a. to e. in paragraph 1. What the Irish side envisaged were North-South economic issues at present dealt with within the AIIC. A problem would arise here in the case of a devolved Executive in Northern Ireland: the British seemed opposed to the suggestion that the devolved Executive would deal with Dublin directly through the new "Joint Body" (comprising London and Dublin) because of likely unionist opposition to, or unwillingness to cooperate with, the "Joint Body". The Irish side said that a mechanism would be

needed to facilitate and promote North-South economic cooperation in the circumstances of a devolved Executive. The British undertook to consider this problem although without commitment.

8. One view within the Irish side was that the list of items a. to e. in paragraph 1 was excessively security-oriented. Another view was that a. b. c. and important elements of d. in practice involved human rights and political questions rather than security. The Irish side told the British nevertheless that Irish Ministers would be seriously concerned about the presentational aspects of the list.

9. The British side said that they would assume that the whole "package" envisaged in the offer might first be presented by way of White Papers (one in London, perhaps one in Dublin) following a Summit and enacted through an Anglo-Irish Agreement and the necessary legislation in the two capitals. This was said without commitment.

10. There was some discussion about the name of the new "Joint Body". The British accepted that this would require very careful consideration and noted the Irish objection to its being referred to as a "Committee" at various points elsewhere in the text.

11. It was noted that it was satisfactory that the British have proposed to focus the main work of the new institution envisaged in the British proposal on Northern Ireland itself. This would involve a major development of the AIIC (the British have hitherto resisted involving the AIIC in the "internal affairs" of Northern Ireland).

12. The Irish side noted that the language used to attempt to describe the processes of the new "Joint Body" represented a real effort to give substance to its work rather than to

provide for "mere consultation". Nevertheless the Irish side said that Irish Ministers would probably wish to strengthen the text further.

13 The Irish side, concerned that the arrangements should not permit the British to give an appearance of involving the Irish Minister for Justice and, by implication, security issues disproportionately (in a political sense), said that, subject to further instructions, the Irish side assumed that a particular Member of the Irish Government would be designated to take the lead in, and effectively to handle the joint arrangements on, all matters on behalf of the Irish Government. The British in response said that that possibility was covered by the phrase "the appropriate Minister from the Republic" (paragraph 3); it would be a matter for the Irish Government to say whom that would be. At the same time they would not wish to see any particular Minister on our side formally excluded.

14. The British accepted that the form of presence was somewhat different from what had been envisaged in November i.e. they did not now envisage that the Irish Minister would be resident in Belfast, although they saw the Minister regularly attending the Joint Body and his staff being permanently resident. The Irish side said that, as the British knew well, Irish officials were in practice agents of a Minister and would have to be seen as such. In other words the "Dublin representative" would be an Irish Minister and the officials resident in Belfast would be his agents.

15. The Irish side said that it would be necessary for Ministerial meetings to be a good deal more frequent than every three months (paragraph 3).

16. The point was made within the Irish side that the involvement of the Irish Minister in the manner now proposed (paragraph 3) might have the political advantage of giving him

the appropriate distance and room for manoeuvre in the event of politically difficult security situations arising i.e. his position would be much more difficult were he permanently resident. In these proposed circumstances he could publicly call for and arrange a meeting and more credibly wield the "threat" of withdrawing from the arrangement.

17. The Irish side suggested without commitment that the designated Irish Minister might attend on all occasions, accompanied if necessary from time to time by an additional Minister from Dublin. The British saw no objection to this (paragraph 4).

18. The Irish side said it was very important that the mixed Court be established from the outset as part of the new arrangements. The British said that that would be difficult for them as they were encountering resistance from the Northern Judiciary (Note: this indicates that the matter has been raised with that quarter)

19. The Irish side said that the Irish position remained that, in addition to the immediate establishment of mixed courts for terrorist crime, the Irish side favoured asking the Joint Body to devise proposals for the steps to be taken to establish the following:-

- a single criminal court with the possibility of a jury which could be selected on an all-Ireland basis;
- a single court both for the North and for the South which would have sole jurisdiction in relation to human rights in both jurisdictions;
- a common legal regime in the area of human rights;

- a single appellate division of the All-Ireland Court;
- a uniform criminal law for the two jurisdictions.

20. On the question of relations between the police and the community (paragraph 6) the Irish side said that the measures outlined, while unobjectionable, would probably not meet the requirement of reversing alienation from the outset. The British said they would await Irish suggestions.

21. The Irish Side said that while the UDR might not come under the heading of paragraph 6, it was necessary to stress that its relation with the nationalist community presented an extremely difficult problem which would have to be resolved.

22. On the paragraph headed "Security Co-ordination", the Irish side said that it might on certain occasions be inappropriate that the two police chiefs should be in attendance. This was accepted and the British proposed that wording such as "if invited" might apply instead of that in paragraph 8.

23. The Irish also said that issues arising from security operations in Northern Ireland and issues arising in North-South security co-operation should in this text (paragraph 8) and as a matter of procedure be handled differently and separately: the first normally involved human rights and political questions for the Irish Government and the second security as such. This was accepted and it was proposed by the British that the references to security co-operation in paragraph 8 would be taken down to paragraph 9.

24. When at a later stage, the Irish side pointed out that the issue of jointly deciding "policy guidelines" seemed to have disappeared from the British approach, the British said that it

should be understood that that element was covered by the phrase "to identify policy issues" in paragraph 8.

25. The British said that special procedures would have to be established to facilitate the Irish input into nominations to the authorities named in paragraph 12 - these procedures might have to be "informal" so as not to exacerbate unionist reaction. The Irish side said that to reverse alienation, the Irish involvement would have to be public and substantial. A difference was noted here.

26. A useful discussion took place on devolution (see below). In the context of the British text the Irish side said that in the event that devolution proved not to be possible, there would be advantage from several viewpoints in devolving to the remit of the Joint Body the issues which could be devolved under the 1982 Northern Ireland Assembly Act e.g. first, unionists would prefer that there should be no involvement of the Irish Government in these areas and that in itself might be an incentive to them to share power (the British side saw some merit in this) and second, the involvement of the Irish Government in these areas would be useful in winning the confidence of the nationalist community. It would appear that the British in this Proposal may have deliberately excluded this possibility, however, and this, together with the unwillingness to concede full participation in decision-making on security policy, police complaints and nominations of senior police officers, may mark off this proposal from the more ambitious approach.

27. One reason why the British are taking this line may be that they want to keep the role of Dublin institutionally separate from devolution to the point that they could implement these Anglo-Irish joint arrangements whether or not there was devolution or possibly in advance of devolution. In answer to questions, the British acknowledged, without commitment, that this possibility was in their minds.

28. The Irish side also raised the question of the Anglo-Irish Parliamentary Tier. The British said they had had the impression that this element had a declining priority on the Irish side. The Irish side said that it could be useful in providing a role both to the SDLP and the Opposition in Dublin in the overall package.

29. The Taoiseach feels that, rather than present a totally different approach by way of response, it would be of advantage that the text of the Irish response should include as much of the British Proposal as possible. Accordingly, a draft response on these lines has been prepared - copy attached. For ease of reading, the proposed draft response has been set out in a manner which makes clear where new elements of substance have been included in the Irish text, where the British text has been re-phrased or re-arranged and where elements of substance in the British text have been dropped.

Devolution

30. Irish Ministers and Officials have had contacts with a number of prominent unionists in recent weeks as well as, on several occasions, with Hume and other members of the SDLP. Hume has also had important meetings with Thatcher and with Hurd. The following developments should be noted.

31. While this is not yet firm, the British are becoming more optimistic about the possibility of a form of devolution being feasible. Hume has also begun to share this optimism. There are also some confidential indications from well-placed unionists that there may be some ground for British hopes.

32. The British have indicated to Hume a willingness to investigate unionists views on the possibility of devolution and report back to Hume accordingly. This would put the onus on the British to clarify whether there are indeed good grounds

for attempting to move to devolution. The British have not yet reported on their soundings. It is important to note that Hume has not yet taken his own party colleagues into his confidence.

33. The 1982 Northern Ireland Assembly Act provides for the possibility of a partial form of devolution. This would mean that a number of Departments of the Northern Ireland Civil Service would be devolved to local political control e.g. 4 or 5 of the existing 6. In those circumstances the Secretary of State would retain control of 1 or 2 Departments e.g. Finance and Personnel. The devolved Departments would be headed by representatives of the main political parties including the SDLP. In those circumstances a formal Executive as such would not exist but it would be necessary for the Secretary of State to coordinate with the Heads of Departments who held political responsibility. This approach now actively contemplated by the British, reflects some ideas which were advanced during the past several months by the Irish side.

34. The coordination of the Anglo-Irish negotiations and the negotiations leading to devolution involve complex political problems for both Governments and for the other political parties concerned. The Minister for Foreign Affairs will meet on Monday 4 February next with Secretary of State Howe and Secretary of State Hurd in London. It is hoped that the Minister will be able to learn in more detail the nature of British strategic and tactical thinking on this problem.

Decision Sought

35. The Taoiseach seeks the approval of the Government for the presentation to the British side through the confidential official channel of the proposed Irish draft response.

BRITISH PROPOSAL

There would be established within the framework of the Anglo-Irish Intergovernmental Council a joint body to consider on a regular basis and in relation to Northern Ireland;

- a. legal matters;
- b. relations between the police and the community;
- c. prisons policy;
- d. security co-ordination;
- e. political and human rights questions

Other topics might be added by agreement.

2. Unlike the existing AIIC machine this body would be primarily concerned with North/South rather than East/West relationships and would meet on a regular rather than an ad hoc basis. The British Government would accept that the Government of the Republic of Ireland could put forward views on matters relating to Northern Ireland within the body's remit. In accordance with the general practice of the AIIC, every effort would be made to resolve any differences rather than simply reporting them to the two Governments. Attention at the highest level would thus be given to the matters in question; but there would be no derogation of sovereignty on the part of either the United Kingdom or the Republic. The focus of the body's work would be mainly in Northern Ireland; but some of the matters under consideration would involve co-operative action in both parts of the island of Ireland, and possibly also in Great Britain. Some of the proposals considered in respect of Northern Ireland might also be found to have an application in the Republic.

3. The body would meet at Ministerial or official level, as required. There would be regular Ministerial meetings, say once every three months; and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Committees more frequently. Membership would be small and flexible. There would be a small joint secretariat which could be located in Belfast. When the body met at Ministerial level the Secretary of State for Northern Ireland and the appropriate Minister from the Republic would be joint Chairmen. They would be accompanied by their Permanent Secretaries and by other officials and professional advisers.

4. The body (and its Sub-Committees of officials) could meet in separate modes for each of its main areas of interest, and additional members, appropriate to the subject matter, would attend; thus when it met in its legal mode the Attorneys General might attend.

Legal Matters

5. In this mode, the body would deal with issues of concern to both countries relating to the enforcement of the criminal law. A Sub-Committee could be established to examine whether there are areas of the criminal law applying in Northern Ireland and the Republic respectively which might be harmonised with advantage to both countries. Another Sub-Committee could consider whether there would be advantage in setting up any system of joint or mixed courts for terrorist crimes; and, if so, what form such a system might take. The body would also be concerned with the oversight and review of arrangements between the Republic and Northern Ireland for extradition and extra-territorial jurisdiction.

Relations between the Police and the Community

6. In this mode, the body would consider relations between the police and the community, with particular reference to the minority community in Northern Ireland. A programme of action might be put in hand which would include:

- i. the establishment of local consultative machinery;
- ii. training in community relations;
- iii. crime prevention schemes involving the community;
- iv. improvements in arrangements for handling complaints;
- v. action to increase the proportion of Catholics joining the RUC.

It would be accepted by both sides that these measures would be directed primarily towards Northern Ireland, with the object of making the police more readily accepted by the nationalist community there, but that some of them might be developed/in ways which might also have an application in the Republic.

Prisons Policy

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

Security Co-ordination

8. The body would consider at its regular meetings the security situation, with the Chief Constable and the Commissioner in attendance. This would provide an opportunity to discuss serious incidents, and forthcoming events (eg parades

and processions), to identify policy issues, and to enhance co-operation between the security forces of the two Governments in the common fight against terrorism. The body would have no operational responsibilities; responsibility for police operations would remain with the heads of the respective police forces, and the Chief Constable of the RUC would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister of Justice.

9. The body would set in hand a programme of work to be undertaken by the Chief Constable and Commissioner and groups of officials in such areas as:

- i. the exchange of intelligence and the preparation of agreed threat assessments;
- ii. the establishment of effective liaison structures between the security forces of the two countries;
- iii. technical co-operation, eg in communications, forensic matters and control of explosives;
- iv. training and the exchange of personnel;
- v. cross-border co-operation and co-ordination of operational resources.

Political and Human Rights Questions

10. In this area the Committee, or a Sub-Committee, would concern itself with measures to recognise national identity, to protect human rights and to prevent discrimination. Here again, it would be accepted that the focus should be on Northern Ireland, but the possible application of any such measures to the Republic would not be excluded.

11. Measures to be considered in this area in respect of Northern Ireland include the use of the Irish language (eg in street names), changes in electoral arrangements, and the possibility of removing restrictions on the flying of flags. Consideration might be given to the benefits which could be expected from some form of Bill of Rights for Northern Ireland and the difficulties which this would present. If a Bill of Rights were judged to be desirable in Northern Ireland the Committee might also consider whether similar action should be taken in the Republic.

12. The Committee would provide opportunities to ensure that Irish views were taken into account by the Secretary of State for Northern Ireland in making the appointments to:

Police Authority for Northern Ireland
 Police Complaints Board
 Fair Employment Agency
 Equal Opportunities Commission
 Standing Advisory Commission on Human Rights

Devolved Government

13. The arrangements described in this note would be largely unaffected by the creation of a devolved government in Northern Ireland. The exceptions are:

- i. in paragraph 12, appointments to the Fair Employment Agency and the Equal Opportunities Commission (but not any of the other appointments) would fall to the devolved government, and the Secretary of State for Northern Ireland would be unable to offer to discuss them;
- ii. some, but not most, of the issues arising under paragraph 10 would also be for the devolved government

rather than the Secretary of State; but major issues such as electoral law, the law on discrimination and any Bill of Rights would remain within the Secretary of State's responsibilities, and available for discussion in the Standing Committee.