

NATIONAL ARCHIVES

IRELAND



Reference Code:	2015/89/82
Creation Date(s):	25 June 1985
Extent and medium:	10 pages
Creator(s):	Department of the Taoiseach
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Oifig an Taoisigh

Memorandum for the Government

Anglo-Irish Negotiations

1. The Taoiseach wishes to inform the Government of the present state of Anglo-Irish negotiations and to seek the approval of the Government for the continuation of these negotiations with a view to holding an Anglo-Irish Summit later, if the substance of an Agreement has been secured on terms satisfactory to the Government.

Recent Background

2. A formal written proposal was made on behalf of the British Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Northern Ireland on 21 January. An Irish counter-proposal drafted under the instructions of the Government was transmitted to the British on 18 February and agreed at official level with British officials.

3. Later in February the British Prime Minister arranged to establish an enlarged Cabinet Committee to handle this matter: the enlarged committee, which she chairs, in addition to Howe and Hurd includes the Secretary of State for Defence Heseltine, the Lord Chancellor Lord Hailsham, the Secretary of State for Industry Tebbit, the Home Secretary Brittan, the Chancellor of the Duchy of Lancaster Lord Gowrie, the Leader of the House of Lords Lord Whitelaw and the Attorney General Havers.

4. The Committee has met on at least two occasions and two further versions of the British Proposal were transmitted to the Irish side under its formal authority: a draft dated 29

April 1985 which was rejected by the Irish side and the latest draft dated 11 June 1985. The draft of 11 June 1985 meets the Irish counter-proposal of 18 February 1985 in all points of substance and is set out in a form close to a final version of a draft agreement between the two Governments. (Note: there remains the same single point of disagreement in substance between the two sides in relation to joint courts although the latest British language is somewhat improved on this particular point). At a meeting of officials on 14 June 1985 a number of changes to the latest British proposal were agreed at official level between the two sides subject to confirmation by Ministers and subject also to the Irish side being entitled to suggest further drafting changes if necessary.

5. Copy of the latest British Proposal is attached including in notes the changes agreed by officials on 14 June 1985.

6. Since the first official discussions after the Chequers Summit, the Irish side have insisted that any agreement to be acceptable would have to be accompanied by a range of associated unilateral measures and one bilateral arrangement. The Irish side identified the following areas as involving the need for British action to accompany an agreement:

- Restructuring and redeployment of UDR;
- Changes in RUC
- Prisons Policy

The Irish side also called for the establishment bilaterally of a large international fund to accompany the launching of an agreement aimed at job creation mainly in the North but also in the South.

7. A degree of progress has been made in the negotiation of all of these associated measures as set out below. Further

negotiation will be needed before a definitive picture can be presented of this part of the overall "package".

8. The British, for their part, have requested that the Irish side should (i) make a statement on the status of Northern Ireland, (ii) reintroduce Garda task forces in the border area and (iii) ratify the European Convention for the Suppression of Terrorism. A draft joint statement on the status of Northern Ireland is included in the latest British proposal. The Minister for Justice is prepared to contemplate the establishment of a border task force to meet the security exigencies associated with the uncertainty of the period immediately following an Anglo-Irish Agreement. The Attorney-General has advised that the ratification of the European Convention would require legislation but would not be ultra vires of the Constitution.

The Overall "Package"

8. Both sides envisage an initiative comprising (i) a new Anglo-Irish Agreement based on the attached text as well as (ii) individual statements from each of the two Governments setting out the associated measures which each side would propose unilaterally to implement. It is now possible to envisage the contents of an overall "package" should it emerge along the lines that the Irish side are working for in the concluding phase of this negotiation. Following is a brief account of what is envisaged with notes, as necessary, on the problems remaining to be negotiated under each heading.

Irish Government Role in Northern Ireland

9. The general definition of this role is in paragraphs 3, 4 and 5 of the latest British Proposal. A new joint body (the title of which remains to be settled) would be established within the existing Anglo-Irish Intergovernmental Council "to deal with" a range of matters in relation to Northern Ireland. The Irish Government would put forward views and proposals

within this body on a defined range of issues. The key definition of the role of the Irish Government in the decision-making process is in the agreed statement: "In the interest of promoting peace and stability, determined efforts would be made through the Committee to resolve differences". In other words the Irish Government's role within the decision-making process would not merely reside in putting forward its own views (i.e. "consultation" in its minimal sense) but, more importantly, in a continuing joint effort to "resolve differences". The importance of this joint effort is underlined by the statement that this is "in the interest of peace and stability", i.e. failure to resolve differences could have implications for peace and stability. (Note: it proved quite difficult to secure this definition from the British side).

10. The new joint body would be Ministerial, comprising an Irish Permanent Ministerial Representative and the Secretary of State for Northern Ireland. Other Irish and British Ministers could attend. The body could also meet at official level in sub-committees. There would be a permanent secretariat - the British accept that this would be established in Stormont.

The Range of Issues Involved

11. This would depend on whether or not devolution on a power-sharing basis could be achieved or sustained. There are thus two basic parts to this range of issues:

- those issues which would come within the remit of the body in either event: (i) questions of identity, (ii) human rights, (iii) the law, (iv) Northern Ireland security policy (principally in its human rights dimension) and (v) North-South security co-operation;

- those additional issues which would come within the body's remit in the event that it proved impossible to achieve or sustain devolution: (i) major legislative proposals and major policy issues in the social and economic area within Northern Ireland inasmuch as they bore significantly on the interests of the minority and (ii) North-South social, economic and cultural co-operation.

12. It is also accepted that the Irish Government would be involved in relation to the modalities of establishing devolution in Northern Ireland "insofar as they bore on the interests of the minority community".

13. It is also accepted that in the event of devolution, "machinery" would be needed between Dublin and Belfast to facilitate North-South cooperation in the fields of social, economic and cultural issues.

Nominations

14. Paragraph 12, subject to the general rubric of the nature of the role of the Irish Government (as described above), provides for an Irish role in the process of nomination of a number of important public bodies of which the Police Authority (which controls and finances the police and nominates its principal officers) is perhaps the most important.

The Law

15. It is envisaged that the criminal law North and South should be harmonised under the aegis of the new joint body. It is also envisaged that the joint body would examine the scope for a Bill of Human Rights for Northern Ireland.

16. The only major difference of substance in the latest British draft proposal relates to the issue of "Joint Courts"

(see paragraph 17 of the British Proposal). The British have improved on their earlier formulation by agreeing on the principle of "the desirability of ensuring that there is public confidence in the administration of justice", which contains an implication that there is a problem. However, essentially for reasons which will be explained orally, they are not ready to accept that the new joint body would, as we have proposed, "devise the steps necessary to establish" Joint Courts North and South. The British, at this stage of the negotiation are not prepared to commit themselves further than to say: "The Committee will seek means to this end (i.e. the "desirability" principle mentioned above) considering inter alia the possibility of establishing a system of joint courts for trying terrorist crimes". The Taoiseach believes that there may be further room for negotiation on this issue before a definite judgement must be made on this aspect of the "package".

Review

17. Paragraph 13 provides for review of the scope and nature of the Agreement at the initiative of either party after three years or earlier. The Taoiseach believes this is important as an indication of the open-ended nature of the new process established by the Agreement.

Parliamentary Tier

18. The possibility of the establishment of this body is held out in the Agreement as drafted by the British. Pressure to establish a Tier has been developing among a group of Tory Lords and M.P.s at Westminster who are beginning to take a positive interest in an Anglo-Irish initiative. It is unlikely that the British would in the first instance be prepared to envisage the involvement of members of the Northern Ireland Assembly in a Tier, although an intention to include them at a second stage could realistically be aimed at.

Declaration on the Two Identities

19. As a major element in the associated measures suggested by the Irish side to improve the security situation immediately in Northern Ireland, it is envisaged that all members of the RUC and the UDR should make a declaration accepting and undertaking to respect the legitimacy of the nationalist as well as the unionist identity. British officials have indicated that they are attempting to draft a "code of conduct" incorporating a principle along these lines. The Irish side would wish to see this extended if possible to all official circles in Northern Ireland; this may be difficult.

UDR

20. The Irish side have proposed informally that the force be restructured so as to eliminate part-time elements and to improve training. The Irish side have also proposed informally that the UDR be redeployed so that they act solely in aid of the police who alone would have the power of arrest and who in practice would be the sole agents of direct contact with members of the public. Indications are that these ideas are now being pursued seriously by the British side.

RUC

21. Apart from the central proposal of a declaration on the two identities, indications are that the British oppose on security grounds the idea of local unarmed police forces in certain areas attached to the existing force within an overall "Northern Ireland Police Service". The notion of encouraging a small number of retirements through a system of inducements has not been rejected once it is accepted that this is not carried out in a systematic, public or semi-public way. (Note: a programme of activity designed to improve the relations between the police and the community, in the elaboration of which the Irish Government would have a role, is envisaged separately in paragraph 15 of the latest British Proposal).

Prisons Policy

22. This is a matter for oral briefing.

International Fund

23. Mrs. Thatcher has evinced considerable enthusiasm about this concept, seeing in it perhaps, not alone financial advantage, but a concrete expression of an end to international criticism of British policy on Northern Ireland, notably in the U.S. It is envisaged that a Fund for Reconciliation and Reconstruction in Ireland be established aimed at job creation in areas of traditional high unemployment primarily in the North but also in the South (on a 3:1 ratio). The Fund would be established through contributions from the United States, the European Community, Canada and Australia. President Reagan has expressed a general willingness to help to the Taoiseach and Mrs. Thatcher separately. Speaker O'Neill has also given an undertaking (Note: the House of Representatives is the agency of supply of public funds in the U.S.). The Taoiseach has spoken to the Heads of Government of France, West Germany, Netherlands, Luxembourg and Canada and has received a positive reaction in principle to the concept. The Tanaiste has spoken to Delors, President of the Commission and has received a similar reaction. The Minister for Foreign Affairs has spoken to the Foreign Minister of Australia who was interested in principle.

24. The modalities of establishing and administering such a Fund have got to be settled. It is likely that, in the first instance, this particular initiative would take the form of public expressions of support and public undertakings to contribute to the Fund on the part of the Governments concerned to coincide with the launching of the Agreement.

Input of the Irish Government

25. First it is important to underline that, contrary to the speculation, the Irish Government is not called upon to change the Irish Constitution in any respect or to commit any security forces to Northern Ireland. In the proposed declaration on the status of Northern Ireland, the Government would not go beyond the declaration made at Sunningdale other than to "recognise that the present wish of a majority of the people in Northern Ireland is for no change in the status of Northern Ireland", a statement of fact with no legal or constitutional implications. The reconstruction of a task force is a question of management. The ratifying of the Convention on the Suppression of Terrorism is a matter for legislation.

Assessment

26. The Taoiseach believes it is worth pursuing the present negotiations with a view to completing the Irish Government's set of desiderata in the overall package. The conclusion of the work of negotiation is likely to taking a further five or six weeks at least. The Taoiseach would propose to participate in an Anglo-Irish Summit only if all elements of substance in the overall package had been fully agreed in a manner satisfactory to the Government. Latest indications are that the British envisage the holding of a Summit for the purpose of formally concluding a new Anglo-Irish Agreement and the publication of separate statements of intent on the associated measures in September.

Publicity

27. The Taoiseach would wish Ministers by and large to refrain from comment on the current state of negotiations and, if obliged to do so, to avoid raising expectations which would have to be dashed in the event that areas of disagreement might

arise, which remains a real possibility.

Decision Sought

28. The Taoiseach requests the approval of the Government for the continuation of the present Anglo-Irish negotiations for the time being, with a view to his participation in an Anglo-Irish Summit later, if the substance of an Agreement has been secured on terms satisfactory to the Government.