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Oifig an Taoisigh

Memorandum for the Government

Anglo-Irish Negotiations

1. At its meeting of 25 Meitheamh the Government approved the continuation of Anglo-Irish negotiations with a view to holding an Anglo-Irish Summit later, if the substance of an agreement had been secured on terms satisfactory to the Government.

2. The Taoiseach wishes to bring to the information of the Government the main developments which have taken place since that Government decision.

Draft Text of an Agreement

3. The negotiation has been virtually completed, without commitment, on a draft text which would form the basis of an agreement. Copy of the text as of 22 July 1985 is attached. Work is now in hand on the "translation" of the draft into legal language. It will be noted that there remains one outstanding difference between the two sides in relation to the formula to be employed in Paragraph 17 referring to the establishment of Joint Courts. It has been decided to ask the Attorneys General of the two Governments to meet in the near future to examine whether an agreed approach can be found.

"Associated Measures"

4. When the Taoiseach and the Prime Minister met in Milan on 29 June the most difficult area of difference between the two sides related to the manner and substance of the announcement by the two sides of measures to be taken unilaterally by the two sides at the time of signature of the agreement in the following areas:

- by the British side

- restructuring and redeployment of the UDR;
- reform of the RUC in a manner that would commit the force to acknowledging and respecting the legitimacy and validity of the nationalist and unionist identities;
- prisons policy.

- by the Irish side

- deployment of a Garda Task Force south of the border;
- ratification of the European Convention on the Suppression of Terrorism.

The Taoiseach indicated in the strongest terms to the Prime Minister that the Irish Government could not contemplate participation in an agreement unless a satisfactory solution were found in these areas. The Prime Minister, although initially opposed to the concept, offered a solution in terms of "early implementation" by the new Intergovernmental Body (to be known either as the "Intergovernmental Commission" - the Irish preference - or the "Intergovernmental Committee" - the British preference).

5. At subsequent negotiating sessions the British proposed that the announcement of an Agreement would be accompanied by a Joint Communique in which the two Heads of Government would exceptionally announce that the new Body would meet in the aftermath of the Summit to deal with measures to be taken in these areas. At the same time the Irish side would be given an advance undertaking as to the substance of the measures which would be taken following the deliberations of the Joint Body. The Irish side indicated that the Irish Government would

require that the anticipatory references in the Joint Communique should be sufficiently clear and binding so as to enable Irish Ministers on the occasion of the Summit and in its immediate aftermath in a special meeting of Dail Eireann to make it unquestionably clear that those measures would definitely be taken and they they would be adequate.

6. Attached is a copy of the latest draft section of a Communique proposed by the British side for these purposes. This draft reflects earlier exchanges and is subject to further negotiation.

7. The negotiation is continuing, not alone on the presentation in the Joint Communique, but also on the substance, especially in the case of the UDR. Following is the present situation.

UDR

7. The British had earlier refused to contemplate the disbandment of the UDR. The Irish side have made a series of proposals, based largely on an analysis provided by the Defence Forces. Following are the main elements in the present British approach:

- redeployment

- deployment, to the greatest extent possible and progressively, only in support of the police, with a view to deployment exclusively in this way;
- elimination, as far as possible and progressively with a view to complete elimination, of the use of the powers of arrest;
- efforts to increase progressively geographical deployment only in non-contentious areas;

- statement of intent on eventual deployment of police only on internal security duties.
- structure and discipline
 - establishment of a specific code of conduct which would as a matter of enforceable discipline bind all members to respect the nationalist as well as the unionist identities. [Note: this would be modelled on an important initiative now being prepared in relation to the RUC];
 - certain suggested improvements in the structure of units;
 - increased training of part-time members;
 - increased involvement of regular Army officers and N.C.Os in the Regiment.

RUC

8. The British side accept that a binding new code of conduct would be issued to and enforced on all members of the force which would specifically require each policeman to acknowledge and respect the nationalist as well as the unionist identities. Work has been put in hand on the preparation of this code which will be dealt with in the Intergovernmental Body. [Note: it is understood that members of the force who refused to accept the code would leave the RUC].

9. It is accepted in the draft agreement that the Irish Government will, if necessary, make proposals on the role and constitution of the present Police Authority. This issue will appear quickly on the agenda of the Intergovernmental Body, if the agreement is proceeded with, in the context of proposed reforms of the police complaints procedures which, as at

present envisaged, could probably require legislative change in the existing police legislation. Detailed consultation by the Irish Government will be necessary with legal experts in the North and in particular with the SDLP.

Prisons Policy

10. For oral briefing.

Fund for Reconstruction and Reconciliation in Ireland

11. Preliminary contacts with the US Administration and congressional leadership indicate that the prospects for a substantial US financial commitment are satisfactory. The British, who support this initiative, have also had exchanges with the Administration. There will be further contacts by both sides with the US authorities in the coming weeks with a possible joint approach immediately before an Anglo-Irish Summit, should a Summit take place.

12. The Taoiseach has had personal contact with the Heads of Government of most Community countries and with the Prime Minister of Canada. There has also been contact with the Australian authorities. All of the authorities concerned have expressed an interest in principle in supporting the Agreement. The British at this stage would prefer that support should come not from the Community as such, but only from the larger Member States and then only following some time after the US initiative. There are indications that they may come to take a more positive view.

Summit

13. If an agreement is to be signed, it will have to be ratified by the Dail before any meeting of the Intergovernmental Commission/Committee takes place. The

British say that they will have to make the agreement at least the subject of a debate in the Commons before a meeting. The Commons will, on present plans, be recalled on 21/28(?) October, British Ministers would, the Irish side have been told, "strongly prefer" that the Commons should not be recalled for this purpose before its due date.

Draft of 22 July 1985

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

British Proposal

I. Preamble

1. The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland -

wishing further to develop the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Community;

recognising the major interest of both their countries, and above all of the people of Northern Ireland, in diminishing the divisions there and achieving lasting peace and stability;

recognising the need for continuing efforts to reconcile the two major traditions that exist in Ireland, represented on the one hand by those who wish for no change in the present status of Northern Ireland and on

the other hand by those who aspire to a sovereign united Ireland achieved by peaceful means and through agreement:

reaffirming their total rejection of any attempt to promote political objectives by violence or the threat of violence and their determination to work together to combat those who adopt or support such methods;

recognising that a condition of genuine reconciliation and dialogue between unionists and nationalists is mutual recognition and acceptance of each other's rights;

recognising and respecting the identities of the two communities in Northern Ireland, and the right of each to pursue its aspirations by peaceful and constitutional means;

reaffirming their commitment to a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance and with the opportunity for both communities to participate fully in the structures and processes of government;

agree as follows:

II. Status of Northern Ireland

2. The two Governments:

1. agree that any change in the status of Northern Ireland could come about only with the consent of a majority of the people of Northern Ireland;
2. recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;
3. declare that, if in the future a majority of the people of Northern Ireland clearly wished for and formally consented to the establishment of a united Ireland, they would support the introduction in the respective Parliaments of legislation to give effect to that wish.

III. The Intergovernmental Commission (Committee)

3. There would be established within the framework of the Anglo-Irish Intergovernmental Council a new body, to be known as the Intergovernmental Commission (Committee), to deal on a regular basis and in relation to Northern Ireland with -

- a. political matters;
- b. security and related matters;

c. legal matters, including the administration of justice;

d. cross-border co-operation;

as set out in this agreement.

4. Unlike the existing AIIC machinery this Commission (Committee) would be primarily concerned with North/South rather than East/West relationships and would meet on a regular rather than ad hoc basis. The British Government would accept that the Irish Government would put forward views and proposals on matters relating to Northern Ireland within the body's remit in so far as those matters were not the responsibility of a devolved administration in Northern Ireland. Attention would thus be given to these matters at the highest level. In the interest of promoting peace and stability, determined efforts would be made through the Commission (Committee) to resolve any differences. The focus of the Commission's (Committee'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 application by the Irish Government. There would be no derogation of sovereignty on the part of either the United Kingdom Government or the Irish Government, so that each would retain responsibility for the administration of government within its own jurisdiction.

5. The Commission (Committee) would meet at Ministerial or official level, as required. There would be regular and frequent Ministerial meetings; and special meetings could be convened when necessary at the request of either side. Officials might meet in Sub-Commissions (Sub-Committees). Membership would be small and flexible. When the Commission (Committee) met at Ministerial level the Secretary of State for Northern Ireland and an Irish Minister designated as the Permanent Irish Ministerial Representative would be joint Chairmen. Other British and Irish Ministers could attend meetings as appropriate: thus when legal matters were under consideration the Attorneys General might attend. Ministers would be accompanied by their officials and professional advisers: for example, when questions of security policy or security co-operation were being addressed they could be accompanied by the Chief Constable of the Royal Ulster Constabulary and the Commissioner of the Garda Siochana. A permanent Secretariat would be established by the two Governments.

6. In relation to matters coming within its remit, the Commission (Committee) would constitute a framework within which the Government of the United Kingdom and the Government of the Republic of Ireland could work together:

- i. for the accommodation of the rights and identities of the two traditions which exist in Northern Ireland; and

ii. for peace, stability and prosperity throughout Ireland by promoting reconciliation, respect for human rights, co-operation against terrorism and the development of economic, social and cultural co-operation.

7. It is the declared policy of the British Government that responsibility in respect of certain matters within the remit of the Secretary of State for Northern Ireland should be devolved within Northern Ireland on a basis which would secure widespread acceptance throughout the community. The Irish Government support that policy.

8. Both Governments recognise that devolution can be achieved only with the co-operation of the constitutional representatives within Northern Ireland of both the traditions there. If full devolution had not taken place, the Commission (Committee) would constitute a framework within which the Irish Government could put forward views and proposals on the modalities of devolution in Northern Ireland, in so far as they bore on the interests of the minority community.

Political Matters

9. The Commission (Committee) would concern itself with measures to recognise and accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and to prevent discrimination. Matters to be considered in this area in respect of Northern Ireland include measures to

foster the cultural heritage of both traditions, changes in electoral arrangements, the use of flags and emblems, the avoidance of economic and social discrimination and the advantages and disadvantages of some form of Bill of Rights in Northern Ireland.

10. The focus of discussion of these matters would be on Northern Ireland, but the possible application of any such measures by the Irish authorities in the South would not be excluded.

11. Should it prove impossible to achieve and sustain devolution on a basis which would secure widespread acceptance in Northern Ireland, the Commission (Committee) would constitute a framework within which the Irish Government could put forward views on proposals for major legislation, and on major policy issues within the purview of the Northern Ireland Departments which remained the responsibility of the Secretary of State for Northern Ireland, significantly and especially affecting the interests of the minority community.

12. The Commission (Committee) would provide a framework within which the Irish Government could put forward views on appointments to be made by the Secretary of State for Northern Ireland to bodies including -

the Standing Advisory Commission on Human Rights;

the Fair Employment Agency;

the Equal Opportunities Commission;

the Police Authority for Northern Ireland;

the Police Complaints Board.

Security and Related Matters

13. The Commission (Committee) would consider:

a. security policy;

b. relations between the security forces and the community;

c. prisons policy.

14. The Commission (Committee) would address the security situation at its regular meetings. This would provide an opportunity to address policy issues, serious incidents and forthcoming events (e.g. parades and processions).

15. The Commission (Committee) would consider relations between the security forces and the community, with particular

reference to the minority community in Northern Ireland. With a view to promoting greater confidence in the security system, a programme of action would be put in hand which might include: the establishment of local consultative machinery, training in community relations, crime prevention schemes involving the community, improvements in arrangements for handling complaints, and action to increase the proportion of members of the minority in the RUC. It would be accepted by both sides that these matters would be directed primarily towards Northern Ireland, with the object of making the security forces more readily accepted by the minority community there, but that some of them might be developed by the Irish authorities in ways which might have an application in the South. The Commission (Committee) could also review the structure, composition and powers of the Police Authority of Northern Ireland.

16. The Commission (Committee) would be able to consider policy issues in the prisons. Individual cases could be raised as appropriate, so that explanations could be given or inquiries instituted.

Legal Matters, Including the Administration of Justice

17. The Commission (Committee) would deal with issues of concern to both countries relating to the enforcement of the criminal law. In particular it would consider whether there are areas of the criminal law applying in the North and in the South respectively which might with benefit be harmonised. The

two Governments agree on the desirability of ensuring that there is public confidence in the administration of justice. (The Commission (Committee) will seek means to this end, considering inter alia the possibility of establishing a system of joint courts for trying terrorist crimes.) It would also be concerned with the oversight and review of arrangements between North and South for extradition and extra-territorial jurisdiction.

Cross-border Co-operation

Security Co-operation

18. With a view to enhancing co-operation between the security forces of the two Governments, the Committee would set in hand a programme of work to be undertaken by the Chief Constable and the Commissioner and groups of officials in such areas as threat assessments, exchange of information, liaison structures, technical co-operation, training of personnel, and operational resources.

19. The Commission (Committee) 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 Royal Ulster Constabulary would maintain his existing links with the Secretary of State and the Commissioner of the Garda Siochana his accountability to the Minister for Justice.

Economic, Social and Cultural Co-operation

20. The two Governments would co-operate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years, and consider the possibility of securing international support for this work.

21. Should it prove impossible to achieve and sustain devolution on a basis which would secure widespread acceptance in Northern Ireland, the Commission (Committee) would constitute a framework for the promotion of co-operation between North and South in Ireland in relation to cross-border aspects of economic, social and cultural matters in relation to which the Secretary of State continued to exercise authority.

22. If responsibility were devolved in respect of certain matters under this heading currently within the remit of the Secretary of State, there would need to be machinery for practical co-operation between the responsible authorities North and South in respect of cross-border aspects of those issues.

Arrangements for review

23. At the end of three years from signature of this agreement, or earlier if requested by either party, the working of the Commission (Committee) would be reviewed by the two

Governments to see whether any changes in the scope and nature of its activities were desirable.

IV. Inter-Parliamentary Relations

24. The two Governments agree that it would be for the Houses of Parliament in Westminster and the Oireachtas in Dublin to consider whether an Anglo-Irish Parliamentary body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981 should be established.