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18 Meán Fómhair, 1985

Summary of Memorandum for the Government

Anglo Irish Negotiations

1. Attached is a memorandum on the background and current position in relation to these negotiations.
2. If an Agreement is reached, the basic public documentation would, on present understandings, be -

- (1) the Agreement;
- (2) a communique;
- (3) a press release;
- (4) a draft document on a Fund.

The texts are still subject to negotiation. The current drafts will be available at the meeting.

3. The essential issues in the negotiation concern -

- (1) The statements on the status of Northern Ireland and on the aspiration to Irish unity, as in the preamble to the Agreement;
- (2) The Courts. The object is to increase confidence in the Northern system. We have suggested a system of mixed courts for subversive offences under which a Southern judge would sit with two Northern judges for offences committed in Northern Ireland and vice versa for offences committed in this State. The British are saying that they are willing to examine, without commitment, the possibility of mixed courts. Supporting or alternative ways of achieving the basic objective may be possible;
- (3) Extradition. The understanding that the Government would ratify the European Convention on the Suppression of Terrorism has now been linked by us in the negotiation with the proposals on the Courts which, at their present stage, may not be considered satisfactory;

Cont'd....

- (4) UDR. We are seeking essentially (a) the elimination of contact between the force and the public and (b) their withdrawal from certain sensitive Catholic and mixed areas. The British have agreed, without commitment, to consider withdrawal from a limited number of the most sensitive areas.

They have already agreed to the progressive application of the principle that the UDR should always act in support of the civil power, i.e. that there would always be an RUC presence with UDR patrols when contact with the public is involved. They have indicated areas where this will be visible within weeks.

We have also proposed the phasing out of part-timers who number about two out of three of the force. This proposal could only be implemented, if agreed, over time. There is at present no agreement on this point.

- (5) RUC. On this, the British appear to be ready to go along with a proposal that a code of conduct, requiring respect for the two traditions in Northern Ireland, should be part of the disciplinary code applying to the force. (This would also, if adopted, be applied, in time, to the Army, including the UDR).

They are keeping four vacancies open on the Police Authority for consideration if an Agreement comes into effect. Changes in the structure and role of the Authority will be for consideration by the Joint Body to be established under the Agreement.

- (6) Fund. Tentative approaches have been made to the Americans for a statement of support from President Reagan and from Congress for an Agreement, if it emerges, followed by an indication that a substantial contribution would be made to a fund, to be established under the Agreement, for reconstruction and reconciliation in Ireland. On present understandings, this Fund could be between \$250 million and \$1 billion to be distributed in the proportion 70:30 as between Northern Ireland and this country, in areas most affected by the violence and for projects most likely to lead to reconciliation. Further approaches are proposed in Washington to firm up these understandings.

Heads of most EEC Governments, and the Canadian Prime Minister have indicated support, including monetary, for the idea of a fund and the Australians are also apprised of the proposal.

- (7) Task Forces. The Agreement will require a higher profile to security activity on the Border, by way of task forces, etc.
- (8) Prisons Policy. The Taoiseach will brief his colleagues orally on this.

(9) Decision. Approval of the Government is required to -

- (1) the continuation of the negotiations with a view to holding an Anglo-Irish Summit, if the substance of an Agreement has been secured in terms satisfactory to the Government; and
- (2) in particular, to the amendment as set out in the memorandum, of the instructions to the Irish officials in the current negotiations on the Government's attitude to the European Convention on the Supression of Terrorism.

18 Mean Fomhair 1985

Memorandum for the GovernmentAnglo-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.
2. The Taoiseach wishes specifically to have the approval of the Government for an amendment as set out in this Memorandum to the instructions of the Irish officials in the current negotiations on the Irish Government's attitude to accession to the European Convention on the Suppression of Terrorism in view of the emerging British attitude to the question of Joint Courts.

Recent Background

3. The Taoiseach, the Tanaiste and the Minister for Foreign Affairs will brief the Government on their recent confidential discussions with an SDLP delegation comprising J. Hume, S. Mallon, E. McGrady and J. Hendron.
4. The Taoiseach and the Minister for Foreign Affairs will brief the Government on their recent meeting with the new Secretary of State for Northern Ireland Mr. King.

5. Three negotiating sessions have taken place since 24 July when the Government was last consulted. The main developments have been: the elaboration by the British of a legal draft text for an Agreement and subsequent amendments to this in negotiation; progress in relation to the problems of a Code of Conduct for the RUC and Irish proposals for restructuring, redeploying and training of the UDR; and the emergence more clearly of difficulties in relation to the Irish proposal on Joint Courts of a character which require a review of the Irish negotiating position in this area as well as in relation to the accession by Ireland to the Convention on the Suppression of Terrorism.

6. The British Government held its first and, so far, sole full Cabinet discussion on the negotiations in the last days of July. The Cabinet approved the continuation of negotiations on the basis of the then existing texts although reservations were voiced on the single issue of Joint Courts on which a difference between Dublin and London had already existed. The British officials involved in the negotiations have had several meetings with the Prime Minister, Howe, Hurd and, most recently, King.

Draft Legal Texts

7. The British have drafted a "Legal Text" which has been the subject of informal although detailed negotiation. An "Irish Version" based on the latest "British Version" will be available at the meeting.

The Overall "Package"

8. It might be useful for the purpose of review to recapitulate briefly on the structure and content of the "package" that is now emerging. This would comprise (a) a new Anglo-Irish Agreement based on the attached texts; (b) a series of unilateral actions and unilateral statements as well as

joint statements anticipating future actions to be taken following consideration in a new body, the Intergovernmental Commission, in relation to, on the British side, the RUC, the UDR and prisons policy and, on the Irish side, a Garda task force; as well as (c) the provision of international political and financial support by the US, the European Community, Canada and Australia, notably through very significant financial contributions, in the first instance from the US, to a Fund for Reconciliation and Reconstruction in Ireland.

Irish Government Role in Northern Ireland

9. The general definition of this role is in Articles 2 and 3 of the draft Agreement. A new joint body (the title of which remains to be settled) will be established within the existing Anglo-Irish Intergovernmental Council "to deal with" a range of matters in relation to Northern Ireland. The Irish Government will 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 shall be made through the Commission (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.

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 if devolution is not achieved at the outset the Irish Government would thereafter be involved in relation to the modalities of establishing devolution in Northern Ireland "insofar as they relate to the interests of the minority community".

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

Nominations

14. Article 6, 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 Rights for Northern Ireland.

16. The only major difference of substance in the draft Agreement relates to the issue of "Joint Courts". Because it has now become the central difference between the two sides, this will be dealt with separately below.

Review

17. Article 11 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 stated to be a matter for the sovereign Parliaments (Article 12). Pressure to establish a Tier has been developing among a group of Tory Lords and M.P.s at Westminster who have been taking 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.

Associated Measures

19. The Irish side have pressed strongly that it is essential from the point of view of nationalist, and particularly Northern nationalist opinion, that certain urgent and "visible" measures be taken in relation to the RUC, the UDR and the

prisons to accompany the signature of an Agreement. The British for their part have urged the necessity, from the point of view of Unionist reassurance, that the Garda Task Force be re-established in the border area and also (although this does not seem to have the same priority) that Ireland accede to the Convention on the Suppression of Terrorism. At an earlier point it had appeared that the British were unlikely to accede to Irish requirements in this crucial area but, following the Taoiseach's meeting with Mrs. Thatcher in Milan (at which this whole problem was presented by the Taoiseach as critical to the position of his Government), a good deal of progress has been made.

20. In effect, rather than two sets of unilateral announcements, the Governments are now proceeding on a more elaborate basis: first, the two Heads of Government would, in the event of an Anglo-Irish Summit, "anticipate" in the text of their Communique both the agenda and, by implication, the outcome of the first meeting of the Intergovernmental Commission which would take place about a week after such a Summit. Aspects of all of the issues concerned, except prisons policy, would be dealt within this Communique. Second, a number of important reforms would be set in train and be "visible" by the time of an Anglo-Irish Summit, notably in the case of the UDR. Third, the British would on their side complete this part of their commitment by a statement in the House of Commons by King in the course of the debate on the Anglo-Irish Agreement in which he would deal with other aspects of the UDR and the question of prisons policy. Copies of the relevant draft section of the draft Joint Communique in its present state of negotiation and of a British draft of a statement on prisons policy will be available at the meeting.

RUC : Code of Conduct on the Two Identities.

21. A Code of Conduct is being drafted on the British side which directly and personally commits each member of the Force, under penalty of discipline, to observe and respect equally and specifically the nationalist and unionist identities. The Code will contain other specifications as to conduct of a normal police nature. It will be possible for the first meeting of the Commission to announce either that such a Code of Conduct is in preparation or that it has been completed. It is intended to extend the Code in an appropriate way to the military including the UDR (see Para. 2 b of the draft Joint Communique).

UDR

22. The British have "unilaterally" (although in reality under the pressure of these negotiations) decided to implement on a large scale with a view to universal implementation, save in the most exceptional circumstances, a policy of ensuring that military patrols and checkpoints are accompanied by a member/members of the police who would be the point of contact with the public. This is crucial in the case of the UDR whose relations with members of the minority in many areas has involved systematic harassment and in many cases criminal brutality. The implementation of this policy will be seen in several areas over the coming weeks and will be applied progressively. The British have, without commitment, invited the Irish side to indicate particular "flashpoint" areas where the UDR's presence has given particular aggravation with a view to their examining the possibility of lowering the UDR profile in these areas. The Irish side have supplied a list of five such areas. The British will unilaterally announce improvements in the levels of training particularly for part-time members as well as an increase in the number of regular British Army personnel in the force. Secretary of State King undertook to the Minister for Foreign Affairs to review the possibility of acting to deal with the specific problems caused by part-timers, but it is far from certain that this will yield any results.

Prisons Policy

23. The Taoiseach will brief orally.

Garda Task Force

24. The Minister for Justice is taking the appropriate action.

Convention on the Suppression of Terrorism

25. The Attorney-General has advised that this Convention is not ultra vires of the Constitution. In view, however, of difficulties in relation to the proposal on "Joint Courts" it is suggested later in this Memorandum that the position on the Convention be reviewed.

International Support

26. Negotiations have taken place on guidelines for a Fund for Reconciliation and Reconstruction in Ireland. Copy will be available at the meeting.

27. The Minister for Foreign Affairs and Howe met the Northern Ireland Secretary of State in Helsinki on 30 July. The US will, in the event of an agreement, announce an intention to contribute a considerable sum towards such a Fund (the existence of which is anticipated in Article 10 of the draft Agreement). The Administration in Washington seems to be contemplating a minimum of \$250 million. The Speaker of the House is likely to propose a considerably larger sum. Further contacts with the US will take place in the coming week.

28. The Taoiseach has spoken to the leaders of several third countries viz. the Heads of Government of all the Member States of the European Community except Denmark, the Prime Minister of Canada and the Deputy Prime Minister of Australia. In all cases he has encountered a positive reaction in principle to

the concept of supporting an Anglo-Irish initiative, should it take place, both politically and financially. The Minister for Foreign Affairs and Howe have agreed in principle to talk to their colleagues in the Community during the coming weeks unless there is a decision to rescind the current negotiations.

British Assessment of Probable Unionist Reactions in
Northern Ireland

29. In recent contacts the British have indicated that their Ministers expect a degree of negative but containable reaction in the first instance on the part of Unionist politicians ("huffing and puffing" was the phrase reportedly used by Hurd in recent meetings with Mrs. Thatcher.) The British hope that in the aftermath of the first political reactions, which they hope will be low-key, an opportunity may develop to launch an initiative on devolution in a new context.

30. The British, furthermore, estimate that on the security front they will be able to contain any Loyalist subversive reaction. They are confident that they will be able to maintain discipline both in the RUC and the UDR but they have some concern about possible negative reactions among prison officers. Our own assessment does not however preclude the possibility of some sectarian attacks by Loyalist paramilitaries or attempts by them at cross-border bombing raids.

31. A detailed assessment of the state of political opinion on both sides in Northern Ireland prepared in the Department of Foreign Affairs and based on current contacts will be circulated for information at a forthcoming meeting of the Government.

Overall Assessment

32. The Taoiseach sees potential in the draft Agreement and the overall "package" for considerable progress towards peace and stability. In essence the Agreement marks a major shift by the British Government in relation to its own sovereign role in Northern Ireland and in relation to acknowledging in an important institutional way the Irish identity of the nationalist population.

33. There are dangers that the Irish Government might be put in a false position especially in relation to difficulties which could arise e.g. in a security crisis. On the other hand the position of the Government is protected by the basic commitment in the agreement that "determined efforts shall be made to resolve differences". In the event of this commitment not being honoured, further protection is available through the following set of graduated responses, only the first of which is, realistically speaking, available to the British:

- (a) Calling a special meeting of the Commission (Article 3);
- (b) Calling for a review of the scope and nature of the Agreement (Article 11);
- (c) Threatening to withdraw;
- (d) Withdrawal

Presentation

34. Preliminary discussions have taken place on problems in this area, in the event of an Anglo-Irish Summit. A draft Joint Press Release which describes the Agreement has been prepared with a view to ensuring that both Governments would have common language with which to describe the new

arrangement. A copy of the draft will be available at the meeting. In general, the approach of the two Governments would be to present the "package" as "important progress towards peace and stability" rather than "a final settlement".

Problem Areas: (a) Joint Courts and the Convention on the Suppression of Terrorism

35. Article 8 of the "Irish Version" of the draft Agreement would provide as follows:

"The two Governments agree on the desirability of ensuring that there is public confidence in the administration of justice. [The Commission (Committee) shall seek means to this end and shall inter alia devise the necessary steps to establish a system of joint courts for trying terrorist crimes.]

The "British Version" contains the same introductory sentence followed by the following variant:

[The Committee shall seek, with the help of advice from experts as appropriate, measures which would give substantial expression to this aim, considering inter alia the possibility of mixed courts in both jurisdictions for the trial of certain offences.]

36. The British negotiators have indicated or implied that there is very little prospect indeed of the substance of the specific proposal on joint or mixed courts being agreed in practice by British Ministers for the foreseeable future. Their objections are basically political and were summed up by King in Dublin on Tuesday: "This would be the straw that would break the (unionist) camel's back at this time". They also have formal objections on the grounds of "sovereignty" and a fear of a perception growing that in terrorist trials in Northern Ireland it would always be assumed that there had been

a 2:1 verdict, with the Southern judge demurring. Whatever about the merits of these "objections" (which are centred on Hailsham, an ally of Lowry's, and extend to a certain extent to Mrs. Thatcher), it is now clear that, whatever language is used, it would be unrealistic to expect that there will be joint or "mixed" courts within a foreseeable period of time.

37. Allied to this problematic situation is the existing serious problem of imbalance as between Catholics and Protestants on the High Court (5:1) and the Court of Appeal (3:1) which together comprise the Supreme Court of Judicature of Northern Ireland (7:2).

38. Given these two problems, given the public opposition of the main Opposition Party to Joint Courts and given the absence of any clear present proposal on the British side to give "substantial expression" to the aim of "ensuring that there is public confidence in the administration of justice", it would seem prudent to indicate to the British at this stage that accession by Ireland to the Convention on the Suppression of Terrorism could only take place in tandem with action which would be seen to give "clear expression" to the aim expressed in Article 8.

(b) "Commission/Committee"

39. The British are aware that the term "Committee" is unacceptable to the Government and that the Government strongly prefer the term "Commission". This term will probably prove unacceptable. It is proposed to maintain the Irish position for the time being. The Government might wish to consider as a possible alternative the term "Conference".

Decision Sought

40. The Taoiseach wishes to secure the approval of the Government for the continuation of Anglo-Irish negotiations with a view to holding an Anglo-Irish Summit later, if the substance of an Agreement has been secured in terms satisfactory to the Government.

41. The Taoiseach also wishes to secure the approval of the Government to the effect that the Irish side in the negotiations should now indicate to the British side that Ireland could not accede to the Convention on the Suppression of Terrorism until substantial expression to the agreed aim of ensuring that there is public confidence in the administration of justice is forthcoming.