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Telefón
Telephone

(01) 780822

Telex 93720

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(MOS)
AN ROINN GNÓTHAÍEACHTRACHA
Department of Foreign Affairs

BAILE ÁTHA CLIATH 2
Dublin 2

March 1989

Mr. D. A. Gallagher
Assistant Secretary
Anglo-Irish Division

cc H. Nally; PSB
H. H. H. H.; H. H. H. H.
(3) General A1
TOK

Review Document

Dear Assistant Secretary

1. As you know, both the Tánaiste and Mr. King have indicated that they would wish to have a joint basis for their consideration of the final Review document at the Conference early next month. Various papers have been exchanged in the Secretariat and there have been extensive formal and informal contacts on the issue. Broadly speaking, both sides feel the most manageable form for the final outcome might be a joint communique which followed the outline and sequence of the Agreement, but not too minutely or at excessive length. It is envisaged that it would affirm the continuing commitment of both Governments to the Agreement, give some assessment of the record to date and outline an agenda for the future.

2. We have now received a proposed British draft of the final communique (attached). It confirms that they see the exercise as a very low key operation indeed. While it contains nothing that is startlingly unacceptable to us, and one or two things which might usefully be amplified, its flat and at time perfunctory tone is unlikely to strike observers as an adequate outcome of the six months or so which have purportedly been devoted to intensive consideration of the Review. It seems as likely to

convey an impression of disinterest in the Agreement as of renewed commitment.

3. On our side of the Secretariat we have also been giving some thought to a final communique. From discussions with the British side, we sense that we start from the following premises:

- (a) While the British are probably glad overall of the existence of the Agreement, the British Prime Minister retains little interest in its workings beyond perhaps the security aspects;
- (b) Mr. King and the NIO are currently dominated by thoughts of enticing the unionists into dialogue and will continue as heretofore to espouse a minimalist implementation of the nationalist agenda;
- (c) There is however some reluctant acceptance that their implementation of the Agreement has caused unmistakeable and widespread nationalist disillusion with its operation and they may be prepared to make some cautious amends on the level of rhetoric and, possibly, in one or two areas of substance within Mr. King's discretion.

4. From an Irish point of view, the choice seems to lie between going public on our dissatisfaction with the operation of the Agreement to date, and using the Review to highlight this, or continuing to work it as best we can, in the hope of preserving the structures themselves and, as far as possible, their credibility also for a possibly more imaginative and forthcoming British attitude in the future. The former would give rise to mutual recrimination and a difficult and possibly unpredictable confrontation between the two sides which would be particularly unfortunate at a time when the Provisionals seemed poised to

escalate their atrocities. The latter course, while it may involve increasing public erosion of the hopes initially vested in the Agreement, seems both safer and more compatible with the Taoiseach's hopes for political dialogue.

5. The enclosed alternative draft, written before the British text was received, follows this latter model and attempts to come to terms with the difficulty that the Review will not reflect any major improvement on the British side. It may be anticipated that the exercise will attract a number of criticisms:

- (a) from nationalists, that it has failed to reinvigorate the Agreement, and thus reflects a diminished commitment by one or both Governments;
- (b) from unionists, that both Governments are obstinately clinging to dead forms which are stifling real political dialogue.

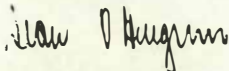
The draft seeks to deal with (a) by reaffirming the initial commitments of the Agreement in areas of particular interest to nationalists, by strengthening the structures of the Conference and by a greater emphasis on cross-border economic cooperation, in particular as regards 1992. It also presupposes that the British could be brought to accept the need for greater efforts to make public bodies representative (Article 6), and generally take a helpful (if regrettably vague) posture on a number of other aspects of nationalist concern. It seeks to blunt likely criticisms under (b) by signalling an openness to future change compatible with the Agreement and the principle of consent (paras 3 and 18 of the draft) thereby attempting to preserve the incentive value of the Agreement for political dialogue.

6. A number of points in the draft anticipate policy decisions which have not been made on our part. There is the danger that silence in the review may be taken as abandoning certain demands, not readily attainable at the moment, such as three judge courts or a Bill of Rights for Northern Ireland. The former might be

preserved in a vague reference to the application of emergency legislation in general (para 11). It would seem useful to maintain a reference to a Bill of Rights, since the trend of British policy at present is running in the opposite direction and one could not rule out an excess of security policy which might require a highly public confrontation on human rights issues, where our concern should appear consistent and long-standing. The draft also anticipates that the question of future review (i.e. after the completion of this one) could be covered in a vague reference to the Anglo-Irish Council (para 18).

8. Given that the British paper does not seem a very attractive basis for drafting, and given the delicate issues of policy and wording involved, I would be grateful if you would undertake the necessary consultations to secure early instruction on a draft which we could submit to the British (with tactical or negotiating elements added as appropriate) and secondly, guidelines on the broad objectives to be secured in the Review process from the Irish point of view.

Yours sincerely



Seán O Huiginn
Joint Secretary

Enclosures: (a) British draft
 (b) Alternative draft

THE REVIEW OF THE ANGLO-IRISH AGREEMENT

1. In accordance with Article 11 of the Anglo-Irish Agreement the two Governments have completed a review of the working of the Conference and have considered whether any changes in the scope and nature of its activities are desirable. In conducting this review the two sides engaged in an assessment of the work of the Conference to date under each of the Articles of the Agreement and examined the overall achievements of the Conference in terms of the stated objectives of the Agreement and the relationship between the two countries. Their discussions in this respect had the benefit of a range of views put to them by interested groups and individuals and they wish to place on record their appreciation of all submissions made to them on the Review.
2. The two Governments availed of the opportunity afforded to them by the Review to reaffirm their joint commitment to the Agreement. They agreed on its continuing importance as a pledge of co-operation between them in their joint efforts to address all the dimensions of the Northern Ireland problem. They recognised that peace and stability in Northern Ireland must be pursued through continuing efforts to reconcile and to acknowledge the rights of 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. They expressed their determination to work together to promote political dialogue and reconciliation between these two traditions at all levels on a basis of the principles of mutual respect and consent, and to implement the Agreement with determination and imagination towards this end. They reaffirmed their unyielding opposition to any attempt to promote political objectives by violence or the threat of violence and committed themselves to close co-operation to ensure that those who resort to such methods do not succeed.
3. The two Governments acknowledged the particular role of the two communities in Northern Ireland in the search for peace and political progress. They recognised that it is these two communities which have suffered most directly from the ravages of violence and from the social and economic problems arising from conflict and instability. They appealed for their wholehearted co-operation with the efforts of the two

Governments to remedy these evils. In particular they urged all sections of the population in Northern Ireland to recognise that violence could neither advance or defend the interests of either community but represented a now unmistakable menace to the welfare of both. They stressed that the Anglo-Irish Agreement represented an orderly framework for progress whereby the two Governments guaranteed protection and recognition for the legitimate aspirations of both communities while at the same time providing flexibility for change in the internal or external arrangements of Northern Ireland, subject only to the principle of consent. In line with the particular importance they attach to the process of reconciliation between unionists and nationalists on a basis of mutual recognition and acceptance of each others rights, they affirmed their readiness, notwithstanding the completion of the present review, to adapt the future working of the Conference and its mechanics to accommodate any change consistent with the basic provisions and spirit of the Agreement where the consent of the two communities for such change could be demonstrated.

4. The two Governments reviewed the work of the Conference to date under each of the Articles of the Agreement. They welcomed the fact that the Intergovernmental Conference had met on some occasions since the signature of the Agreement. They considered that the Intergovernmental Conference, and the Secretariat composed of senior officials from both sides servicing it on a permanent basis, had provided an outstandingly valuable channel of communications between the two sides, enabling them to deal in a regular and organised way with political, security and legal matters relating to Northern Ireland and with the promotion of economic co-operation between both parts of Ireland. The Irish Government had availed of the Conference to put forward views and proposals on these issues for consideration by the British side. The Conference has thus played an important role in the process of policy formation in relation to Northern Ireland and both Governments look forward to developing and enhancing this role in the future along the lines laid down in the Agreement.
5. In this regard and with a view to improving the record of the Conference as a vehicle for resolving differences between them, both Governments agreed that Conference meetings in the future should be organised on a more regular schedule, at the rate of approximately nine per year. In

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addition to meeting the needs of the ongoing work of the Conference, this regular pattern should give both sides an opportunity to review forthcoming events on a systematic basis, thereby enhancing the likelihood of resolving anticipated problems in the spirit of harmony called for by the Agreement and reducing the risk of misunderstanding or confrontation arising from particular events. Since both Governments agreed that the potential of the Conference should be developed beyond a merely reactive role they agreed that future Conference meetings should provide for widened Ministerial participation, at the invitation of the Joint Chairmen, to permit more structured discussion of sectoral issues of common interest to both parts of Ireland. In the interest of ensuring the fullest possible consideration of longer-term issues relevant to the agenda of the Conference it was agreed also that a small number of meetings will be devoted each year to private and informal Ministerial discussion, on the lines of the "Gymnich" formula in use in the European Community. In addition to these provisions the two Governments decided on a number of internal organisational procedures aimed at further enhancing the efficiency of Conference meetings and developing to the optimum extent the role of the Secretariat as the permanent liaison between the two Governments on matters relevant to the agenda of the Agreement. They agreed also to consider ways of developing public awareness of the role of the Conference and its mechanisms through meetings on appropriate occasions between the Joint Chairmen and public representatives or interested parties, the commissioning of studies or surveys relevant to the work of the Conference and greater public information on the operation of the Agreement generally.

6. Both Governments reviewed the application of Article 4 of the Agreement and reaffirmed their commitment to the objectives enshrined in it. They recognised that the test of widespread acceptance throughout the community which was a precondition for devolution was something to be determined by the two communities in Northern Ireland and could not be decided by intergovernmental action, whose scope in this respect was limited to an enabling or supportive role. Both Governments proclaimed their readiness to encourage and engage in political dialogue at all levels aimed at securing political progress, in line with the recognition enshrined in the Agreement of the need for continuing efforts to reconcile and acknowledge the rights of the two major traditions that exist in Ireland.

7. The two Governments acknowledged the central importance in the implementation of the Agreement of measures to accommodate the rights and identities of the two traditions in Northern Ireland, to protect human rights and prevent discrimination. They welcomed a number of positive measures which had been implemented in this respect since the signature of the Agreement. These included the repeal of the Flags and Emblems Act, the enactment of the Public Order Order (1987) enhancing the powers of the police to act on provocative parades and an incitement to hatred and the enfranchisement of the 'I Voters' for local elections. The two Governments attached special significance to the work in hand to introduce new legislation on Fair Employment and agreed that the Conference would monitor the effectiveness of the new legislation in the light of their commitment to eliminate discrimination in the workplace and establish fair patterns of employment in Northern Ireland. They welcomed also the launching of a programme of action to address the problems of West Belfast and other deprived urban areas. Both Governments pledged to continue their efforts under the Agreement to ensure the fullest possible protection of human rights in Northern Ireland and agreed to resume the study of a Bill of Rights for Northern Ireland as a means of promoting this aim.
8. The two Governments reviewed measures which had been taken to foster the cultural heritage of both traditions. They recognised the valuable role which the education system can play in promoting mutual esteem and understanding between the two traditions and supported the efforts being made to reflect this objective in the new curriculum for Northern Ireland currently under preparation. They recognised also the interest of the Irish language in this context and undertook to support efforts to enhance awareness and appreciation of this particular strand of the cultural heritage.
9. The two Governments agreed to continue their efforts to ensure that public bodies in Northern Ireland should be as representative as possible and should enjoy the widest possible respect and acceptance throughout the community. The Irish Government would continue to put forward views and proposals on the role and composition of such bodies for consideration by the British side. The British Government undertook to use the powers available to it to redress as far as possible any imbalance arising in situations where the nominating powers of any public

body were being exercised in a biased or discriminatory manner in favour of one community only.

10. The two Governments considered the record of the Agreement in relation to fostering confidence in the system of justice in all its aspects and ensuring that the security forces in Northern Ireland discharge their duties evenhandedly, acting at all times within the law, with equal respect for the unionist and nationalist traditions and with demonstrable accountability for their actions. They affirmed their commitment, the terrorist campaign notwithstanding, to pursue policies aimed at improving relations between the security forces and the community and enhancing respect for the rule of law. They considered various developments which had affected this issue. They welcomed as helpful a number of measures, such as the handling of sensitive marches, improved police complaints procedure, the promulgation of a Code of Conduct for the RUC and the lapse of the practice of convicting suspects on the uncorroborated evidence of accomplices. They recognised however that much remained to be done in order to translate into reality the goals of the Agreement and to overcome the acknowledged problems which persist in this area. They recognised the special importance of ensuring that complaints against the security forces are speedily and fairly dealt with and in particular that any patterns of harassment are quickly investigated and remedied. To this end a monitoring mechanism of senior officials has been established in the NIO, with input from and briefing to the Anglo-Irish Secretariat. Progress achieved through this process will be reviewed on a regular basis at the Conference. The two Governments also agreed on a fuller and more effective implementation in the future of the commitment in the Hillsborough communique that save in the most exceptional circumstances there should be a police presence in all operations which involve direct contact by the armed forces (including the UDR) and the community.
11. The two Governments reviewed the emergency legislation and its application in the courts; it was recognised that there were obstacles and difficulties caused by the campaign of violence which stood in the way of a repeal of emergency legislation or a return to jury trials for all offences. Subject to these limitations it was agreed that both sides would continue through the Conference to seek ways of reducing the scope and application of emergency legislation wherever this could prudently be done, of offsetting the defects inherent in it, and of promoting the

maximum public confidence in the system of justice. They undertook also to continue their exchanges on prison policy so as to ensure a careful and considered treatment of this sensitive issue.

12. The two Governments were at one on the necessity for effective legal procedures between them to ensure that fugitive offenders are brought before the courts and made answerable for their crimes. It was noted that the Irish Government had honoured the commitment given in the Hillsborough communique to sign the European Convention on the suppression of terrorism and that the necessary legislation to enable the Convention to be ratified and implemented in Irish law had been enacted by the Oireachtas. It was agreed the two sides would continue their close contacts on this issue through the mechanisms of the Conference and the respective Law Officers with a view to ensuring that the legal requirements governing the treatment of fugitive offenders were fully understood and appreciated on both sides, that procedures were clarified and, where appropriate, simplified, and that acceptable and workable arrangements are in place both in relation to extradition and the application of extra-territorial legislation.
13. The two Governments condemned in the strongest terms the loss of life, human misery and wanton destruction so heedlessly brought about by those who seek to promote political ends by violent means. They reaffirmed their determination to counter this evil through a process of close co-operation between the security forces on both sides of the border. They noted that cross-border security co-operation had received regular and intensive consideration at the meetings of the Intergovernmental Conference as well as at frequent inter-police and official level meetings. A program of work between the Commissioner of the Garda Síochána and the Chief Constable of the RUC as envisaged in Article 9 of the Agreement had been put in hand and substantial progress had been achieved under all of the headings listed. In the light of their common determination to combat terrorism and their common understanding of the scale of the threat the two sides in the course of the Review decided on a program of future work between the two police forces to develop further their co-operation in this area and to enhance their capacity to protect human life and property from terrorist outrage. They agreed that progress in cross-border security co-operation would be reviewed regularly by the Conference which the two Governments would continue to

use as a framework to work together as effectively as possible to ensure that those who adopt or support violence do not succeed.

14. The two Governments took stock of the pattern of cross-border economic co-operation since the signature of the Agreement. Apart from the work of the Conference itself some () cross-border Ministerial meetings had taken place in the framework of the Agreement and a cross-border study of social and economic problems in the North West region had been commissioned with assistance from the EEC. The two Governments affirmed their conviction that cross-border economic and social co-operation is to the evident benefit of all the people of Ireland. They agreed that future Conference meetings would include a systematic program of assessment of all the main sectors to determine where the process of co-operation can most fruitfully be expanded. It is envisaged that the responsible Ministers North and South will participate in the work of the Conference for this purpose and that working parties at official level will be created to prepare these discussions and oversee the follow-up, which will be reviewed on a regular basis at the Conference.
15. The two Governments considered also the implications of the completion of the internal market in the European Community in 1992. They recognised that these will be far-reaching and will generate common opportunities for both parts of Ireland as well as common difficulties arising from peripheral island status and other factors. They agreed that the Conference could provide a valuable forum for both sides to assess and manage the cross-border dimensions of this change so as to maximise the advantage to both regions. The work of the Conference on this issue may involve drawing on the expertise or experience of various individuals or organisations in both jurisdictions, the joint commissioning of further expert studies on the lines of those carried out by the NESC and the NIEC and the pooling of research data. The continuation of the dialogue on this issue begun at Louvain in December 1988 will also be encouraged by both sides.
16. In September 1986 the two Governments established the International Fund for Ireland with the financial support of the United States, Canada and New Zealand and from the European Community. In the interval since its foundation the Fund has disbursed some £ m in Northern Ireland and the border countries in the South and has been instrumental in creating some

() jobs. The two Governments expressed their appreciation of the generosity of the donors to the Fund and undertook that they would continue to give every support to its work, with particular emphasis in improving the position in the most disadvantaged areas.

17. The two Governments noted the decision by the Irish and British Parliaments to establish an Anglo-Irish Parliamentary Body of the kind adumbrated in the Anglo-Irish Studies Report of November 1981. They commended this development as providing a valuable independent forum for inter-Parliamentary contacts and agreed to give support as appropriate to this Body in the course of its work.
18. In concluding the Review, the two Governments recalled the aims and objectives set out in the preamble to the Agreement, which enshrined a permanently valid definition of their shared understandings and purposes in relation to Northern Ireland. They pledged to continue in the future to work together for the promotion of close cooperation and good neighbourly relations between the Irish and British peoples, for the lessening of divisions and for the achievement of lasting peace and stability in Northern Ireland. They remained determined to strive through the Agreement for the defeat of violence, for the mutual recognition and respect of each other's rights and identities by unionists and nationalists alike, reaffirming the right of each community to pursue its aspirations by peaceful and constitutional means, and for the creation of a society in Northern Ireland in which all may live in peace, free from discrimination and intolerance, and with an opportunity for both communities to participate fully in the structures and processes of government. They agreed that the Conference, together with its related mechanisms, had proved its value to both Governments in the three years since the signature of the Agreement, and that, while requiring no fundamental change at present, its role could nevertheless be developed and enhanced in the ways set out above. They stressed that the Agreement did not represent a threat to either community in Northern Ireland. It aimed to serve both by providing a flexible and orderly framework, underwritten by both Governments, which guaranteed the essential interests of both communities in the necessary search for mutual accommodation. Both Governments stated their readiness to consider future change in the scope and nature of the activities of the Conference, on the

lines envisaged in Article 11 of the Agreement, where this could be shown to command the support of both communities and to be likely to serve the underlying purposes of the Agreement. They agreed that the Anglo-Irish Council might from time to time review the future working of the Conference to establish whether any such change was called for or desirable.

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The Conference will continue to provide a practical forum for discussing issues and in enabling each side to provide the other with advance information concerning statements, policies and actions in its jurisdiction which may have an impact on Northern Ireland. In response to a point made by several of those who offered their views, the two Governments have agreed that as much information about their discussions should be made available to the public after each meeting as possible, although some matters may have to remain confidential. A number of procedural improvements designed to enhance the effectiveness of the Conference meetings have been agreed. The two Governments acknowledge the valuable contribution of the Secretariat in servicing the Conference and in acting as a channel of communication between them.

Accommodation of the rights and identities of the two traditions

5. The two Governments reaffirm the importance of working together for the accommodation of the rights and identities of both traditions in Northern Ireland. They look forward to further discussion of measures to develop greater mutual understanding and respect between the different parts of the community, noting that this requires proper acknowledgement of the concerns and values of each. There will be continuing discussion of the place of the Irish language in Northern Ireland in the context of respect for the different cultural traditions. The fundamental importance of promoting equality of opportunity in all fields and the proper protection of human rights are reaffirmed. Significant progress has already been achieved in this field, particularly: the legislation to promote equality of opportunity in employment; the initiatives to tackle the problems of disadvantaged areas of Belfast and Londonderry; changes in electoral arrangements; and action on the Irish language.

Political progress in Northern Ireland

6. It continues to be the British Government's policy, supported by the Irish Government, to seek progress towards the devolution of responsibility for certain powers to elected representatives in Northern Ireland. Both sides recognise that the achievement of devolution depends on the cooperation of constitutional representatives of both traditions within Northern Ireland.

Confidence in the security forces and the system of justice

7. There is no doubting the importance of promoting stronger cross community support for the police, the armed forces and the whole system of justice. This is as essential to the achievement of peace and stability as is progress in political, security and economic policies. Progress has been made in measures designed to improve relations between the security forces and the community. These include inter alia: improvements in the handling of complaints against the police and Army; the promotion by the Police Authority and the RUC of a widely representative scheme of local police/community liaison committees based on police sub-divisions; and the introduction of a new Code of Conduct for all police officers. In the prisons, special reviews of all remaining life sentence special category prisoners and of Secretary of State's pleasure prisoners are nearing completion. There have been improvements in the terrorism provisions including a reduction by one third in the period a suspect can be held without Ministerial authority, the provision for a suspect in police custody of a statutory right of access to a solicitor within 48 hours of arrest and a significant reduction in the average delay between remand and trial for those charged with indictable offences.

8. Further confidence measures are in hand or are imminent including: close monitoring of the nature, pattern and handling of complaints by the public about the behaviour of the security forces, further effective development of the policy of RUC accompaniment of

army patrols, additional safeguards for members of the public being questioned by the police for non-terrorist offences, and the publication of a guide to the operation of the emergency provisions. Future meetings of the Conference will continue to review measures that will contribute to promoting the widest public support for the police and armed forces as within the rule of law they protect the whole community from terrorism and other crimes.

9. The two Governments reaffirm the importance which they both attach to the existence of effective arrangements to ensure that suspected offenders could be brought before the courts. They recognise that failure to ensure the just treatment of fugitives accused or convicted of crime particularly of a terrorist nature, benefits only the forces of violence, and undermines the mutual trust between the two sides. Accordingly, they agree to work with renewed commitment towards necessary improvements in the effectiveness of the extradition arrangements, and to the use of extra-territorial proceedings in cases where this is appropriate, with the aim of ensuring that the system works in practice in terrorist and non-terrorist cases, and is seen to do so.

10. The two Governments agree that there should be further study of areas of the criminal law applying in the two jurisdictions which might be harmonised. They note that in a number of areas, including action against terrorist and other illegal finance and the manner of court proceedings, such work may prove fruitful and officials have been asked to set it in hand.

Security cooperation

11. The two Governments reaffirm the fundamental importance of close security cooperation as an essential component in the struggle against terrorism and, while noting that the Conference has no operational responsibility, confirm that it provides a valuable framework through which such cooperation has been and will further be developed in each of the areas identified in the Agreement. They

reaffirm their determination to work together to ensure that terrorism shall not succeed in any part of the island of Ireland and, to that end, have agreed on a number of specific areas which should be given high priority for further study and cooperation. They pay tribute to the many successes which have been achieved by the security forces north and south of the border in the face of a sustained terrorist threat.

Cross-border economic and social cooperation

12. The two Governments reiterate their belief in the importance of further development of cross-border economic and social cooperation, which benefits all sections of the population, and deplore terrorist actions which threaten these links. They look forward to the examination of the opportunities afforded and problems created by the completion of the single market in the European Community by 1992 and agree that this is an area which would profit from further consideration through the Conference. Valuable work is being undertaken by the International Fund for Ireland, in particular the emphasis it is now placing on regenerating disadvantaged areas and its important role in creating additional jobs. The Governments pledge themselves to provide further support for its work and to seek further international assistance.

British-Irish Inter-Parliamentary Body

13. While noting that the Conference has had no role in this, the two Governments welcome the progress which has been made towards the establishment of a British-Irish Inter-Parliamentary Body.

Conclusions

14. The two Governments agree that the Review exercise has been a valuable opportunity to take stock of the progress made since the signing of the Agreement and to consider the future programme of work for the Conference.

10. In concluding the Review, the two Governments reaffirm their commitment to the shared understandings and purposes set out in the preamble to the Agreement, and to the position regarding the status of Northern Ireland as set out in Article 1. They will continue to work together through the institutions and procedures of the Agreement for the realisation of the fundamental objectives of the Agreement of promoting peace and stability in Northern Ireland; helping reconcile the two major traditions in Ireland; creating a new climate of friendship and cooperation between the people of the two countries; and improving cooperation in combatting terrorism. The two Governments reaffirm their determination to work together to ensure that those who adopt or support violence do not succeed. They agree on the need for dialogue at all levels as an essential element in achieving progress and an end to violence, and undertake to give further encouragement to members of both traditions in Northern Ireland to understand and respect each other's concerns towards the goal of reconciliation.