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PROPOSED ANGLO-IRISH INTERGOVERNMENTAL AGREEMENT: RECORD OF A MEETING BETWEEN BRITISH AND IRISH MINISTERS HELD AT THE FOREIGN AND COMMONWEALTH OFFICE ON 7 OCTOBER 1985 AT 10am

Present:

The Rt Hon
Sir Geoffrey Howe QC MP
The Rt Hon Tom King MP
Sir Robert Armstrong
Mr Robert Andrew
Mr David Goodall

Mr Richard Spring TD
Mr Peter Barry TD
Mr Dermot Nally
Mr Sean Donlon
HE Mr Noel Dorr
Mr Michael Lillis

1. Sir Geoffrey Howe, welcoming the Irish delegation, said that there should be no doubt of the Prime Minister's commitment to the search for an intergovernmental agreement, provided the balance was right. The negotiations had been protracted and the outcome was of crucial importance to all the peoples concerned. On timing, there were obvious advantages in aiming to bring the negotiations to a conclusion as soon as possible but these had to be balanced against the parliamentary and practical difficulties. On substance, the two main issues outstanding were the question of Irish accession to the European Convention on the Suppression of Terrorism and the precise arrangements under which the proposed joint Secretariat would operate. Mr King said that the success of the agreement would depend on a clear, shared understanding of how it would work. The objective should be to get it off to a smooth start, pre-empting those who would seek to frustrate it. Mr Spring said that, as a result of leaks and speculation, much of the content of the agreement was now public knowledge. Unionist opposition was gathering steam fast. There was also strong political pressure on the SDLP, whose party conference was due to take place from 6-8 November. From an Irish perspective, the sooner the agreement could be concluded the better.

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European Convention on the Suppression of Terrorism

2. Mr Barry said that the Irish side wished to dispel the impression that their difficulties over acceding to the Convention were connected with the debate in the United States about the proposed UK/US Supplementary Extradition Treaty. The Taoiseach's difficulties had nothing to do with America: they arose from the lack of confidence on the part of the nationalist community in the Northern Ireland courts. This had been exacerbated recently by three important cases in which the Irish Supreme Court had extradited offenders to the North (McGlinchey, Shannon and Quinn), all of which had subsequently gone wrong, and by judicial obiter dicta. (Mr King commented that if, as seemed likely, McGlinchey's appeal was upheld and his extradition to the Republic refused, this would be a source of serious embarrassment to both Governments. Agreeing, Mr Barry drew attention to the 18 month delay in bringing Shannon to trial.) Mr Spring and Mr Barry emphasised that the Irish Government wanted to accede to the Convention; but that their offer to do so had been made in the expectation of some action by the British Government on mixed courts in Northern Ireland or at least to correct the imbalance in the judiciary as between Protestants and Roman Catholics. In the absence of any such action, the Dail simply could not be relied upon to enact the legislation needed to give effect to Irish signature of the Convention: the Taoiseach could sign the Convention but he could not possibly guarantee to get it through the Dail.

3. Mr King drew attention to the reference in the Prime Minister's letter to the Taoiseach to the intention to appoint an additional judge to the High Court in Northern Ireland, and indicated informally that the candidate was a Roman Catholic, as were some of the leading candidates for other judicial appointments as these fell vacant. The confessional balance within the judiciary was therefore likely to change over time. Sir Geoffrey Howe recalled that, at their meeting at Milan on 29 June, the Taoiseach had told the Prime Minister that the Irish Government were ⁿow in a position to sign the European Convention on the Suppression of Terrorism. The Taoiseach had also pressed the Prime Minister to agree to the introduction of mixed courts:

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but the Prime Minister had said in terms that "she could do not more than agree to consider the possibility of joint courts without any guarantee about the outcome". This remained the British position: we were willing to examine the possibility of mixed courts with an open mind, but continued to see the political and practical difficulties which he had explained to Mr Barry on earlier occasions. If however the Intergovernmental Committee foreseen in the draft agreement were established, it might be able to find ways of moving towards a joint system eg at the Appellate level or through closer cross-border judicial cooperation.

4. Mr Spring and Mr Barry asked about the possibility of creating a (Roman Catholic) President of the High Court in Northern Ireland separate from the Lord Chief Justice and responsible for the allocation of work between the judges. (Sir Geoffrey Howe saw difficulties about this idea.) The Irish also asked for consideration to be given to three-man courts (with all three judges drawn from Northern Ireland) in place of the present Diplock courts, arguing that the adoption of the three-man pattern for special courts in the Republic had strengthened public confidence in those courts. Mr Spring suggested that two other features of the Diplock courts should be reconsidered: conviction on the uncorroborated evidence of a single witness and the trial of large numbers of offenders together. In discussion, Mr King said that the matters to which the Irish had drawn attention would be suitable for consideration by the proposed Intergovernmental Committee under the terms of Article 8 of the draft agreement. The whole point of the agreement would be to enable the Irish Government to make a real input in the areas of principal concern to the nationalist community in Northern Ireland. Over time, this would have a profound effect on the situation in the North. Meanwhile he had accepted the reference in Article 8 to the possibility of mixed courts; but only with reluctance, since the idea of mixed courts was seen as having implications for sovereignty and would add to the difficulty of security^{ing} unionist acquiescence in the agreement.

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5. Mr Barry acknowledged that the wording of Article 8 was helpful and that the Irish would attach due weight to it. But he reiterated that accession to the Convention would not get through the Dail without some prior, visible change in the judicial system in Northern Ireland. He pointed out that the preparation of the necessary legislation, and its introduction into the Dail, would in any case take some time: it would be at least six months from signature of the Convention before accession would become effective. This led to some discussion of whether the Irish Government could make a declaration of intent to accede to the Convention, making the act of accession dependent on the evolution of the judicial system in Northern Ireland following conclusion of the intergovernmental agreement. Sir Geoffrey Howe emphasised that the confidence with which the Taoiseach had made his offer of accession meant that it was regarded in London as part of the acquis of the negotiations so far. It was also a very important selling point for the unionists. Mr King agreed, recalling that the Irish offer had been put forward as a "confidence building measure". This was what mattered: any declaration of intent to sign the Convention would have to be in unambiguous terms if it was to achieve its purpose of reassuring unionist opinion.

6. The Irish side agreed that officials should look further at the possibilities to see if the gap between the positions of the two Governments on this issue could be closed. Meanwhile Mr Lillis said it was important to understand that the Taoiseach's statement to the Prime Minister at Milan that "the Irish Government were now in a position to agree" to signature of the Convention referred to the changed advice of the Irish Attorney General, who had earlier taken the view that accession to the Convention would require an amendment to the Irish constitution. The decisions of the Irish Supreme Court in the extradition cases already referred to had led him to revise this view; hence the Taoiseach's statement to the Prime Minister. The Taoiseach had, however, also emphasised to the Prime Minister at Milan that he could not put his name to the agreement unless he had some assurance in advance that the outcome of the consideration referred to in Article 8 would be the establishment

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of joint courts. Sir Geoffrey Howe accepted that this was an important gloss; but he repeated that the Prime Minister had, in the same conversation, made it absolutely clear that she could not agree to do more than consider the possibility of joint courts.

Secretariat

7. Mr King said that the Intergovernmental Committee would be the key to the success of the agreement: the Secretariat was very much subsidiary to it. Its function should be to service the Committee, not to take decisions or act as a complaints commission. It would be useful to consider in detail how the Secretariat would proceed to address particular issues. The British side had prepared illustrative material on this for discussion in the official talks. There was no question of take-it or leave-it proposals, or of introducing new difficulties: the British side would welcome Irish suggestions. It was important to think through the Secretariat's modus operandi together so as to present the minimum of unnecessary flank to those who would want to prevent the agreement from getting off the ground. Among the practical problems he had to consider was the security of the Irish members of the Secretariat, who were bound to be targets for terrorist violence.

8. Mr King said that he had no doubt that, in principle, Belfast was the right place for the Committee to meet and for the Secretariat to be located. But the question of the Secretariat's location had been inflated into a major issue and it was now a focus of resentment even for moderate unionists who reluctantly accepted the idea of an agreement on the lines under discussion. If the Secretariat were ostentatiously established in Belfast for the first meeting of the Committee, there would be major demonstrations and the agreement would get off to the worst possible start. It might be better for the Committee to hold its first meeting in London and the Secretariat to develop gradually from it.

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9. Mr Spring and Mr Barry saw great difficulty about these suggestions. They argued that unless the Committee's first meeting was in Belfast, unionist opposition might prevent it meeting in Belfast at all. Postponement would exacerbate rather than disarm unionist hostility. Sunningdale showed the importance of getting everything into place with the minimum of delay. Sir Geoffrey Howe drew attention to the statement in the Prime Minister's letter to the Taoiseach that, on practical and security grounds, the Irish component in the Secretariat should be kept as small as possible, and perhaps not be left continuously in Belfast, at least until the new arrangements had settled down. This seemed to foreshadow a small Irish presence on the ground in Belfast, but initially perhaps not a continuous one. Mr Andrew thought one could envisage starting with an Irish duty officer at Stormont with a liaison function. Mr Spring said the Irish were thinking in terms of an expert on security matters to act as duty officer, accompanied by a senior official of the Department of Foreign Affairs. Some of the work which would otherwise build up for Ministerial meetings of the Committee could best be dealt with by officials. Sir Geoffrey Howe said that the British side did not envisage the Secretariat "dealing with" issues before the Committee. Decisions would be a matter for Ministers, although the Ministerial discussions would clearly have to be prepared and followed up by officials of the Secretariat.

10. Mr Barry said that some visible Irish Government presence in Northern Ireland from the outset was indispensable if the nationalist community was to be brought to see the new arrangements as a viable alternative to increasing reliance on Sinn Fein as the spokesman of their interests. But this did not mean that the Irish saw the Secretariat as being open to access from the public or acting as a complaints commission. They agreed that its functions should be limited to those of a management body, whose job it was to service the Committee. Mr King said that, although the Committee would have no executive authority, he would take very seriously the issues raised in it. The British side would want to honour the agreement and make it work. This meant that the Committee would need an effective

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Secretariat. The question was how to achieve this without bringing unionist opposition on to the streets. His aim would be to build up the Secretariat gradually, so that there would never be an obvious moment for the opponents of the agreement to mount demonstrations against it. If the Irish presence could be introduced gradually into Belfast without provoking violent opposition the "Orange card" would be on the way out.

11. Summing up this part of the discussion, Sir Geoffrey Howe said there was agreement that the Committee would need a joint Secretariat operating from Belfast; and that the Secretariat's function would be to service the Committee and not to receive complaints from the public. The Secretariat would need office space in whatever building was to be used regularly by the Committee. The Irish side wanted to see it established there as quickly as possible whereas the British preference was for a phased build-up. The answer might lie in meetings between officials to prepare the agenda for the first Ministerial meeting of the Committee, following which a skeleton staff might remain in Belfast to prepare for the next Committee meeting. But there were still a number of practical issues to be resolved including the security of those concerned. Mr Spring commented that there was still some way to go in reaching an agreed understanding on these points. It was agreed that the issues would be pursued further in the official talks.

Devolution

12. Mr Spring and Mr Barry referred to press reports that the Northern Ireland Office was preparing a "green paper" on devolution. They asked whether these reports were correct, and whether it was the intention to publish proposals on devolution concurrently with the conclusion of the agreement. Mr Andrew said that thought was being given to possible models for a devolved government in Northern Ireland but none of them looked likely to attract the necessary support from both communities. There was no likelihood of an early green paper. Mr King confirmed that there was no intention of publishing a green paper in conjunction with the proposed agreement. In answer to a further question from Mr Barry, he also confirmed that, under the

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terms of the agreement, the Irish Government would be able to put forward views and proposals on devolution which the British Government would take into account in formulating their own proposals on this subject.

Timing

13. Mr Barry said that the SDLP conference from 6-8 November was an added reason for concluding the agreement by the end of October. The SDLP leadership was not in complete control of the party and was likely to face a number of resolutions which would seek to impose conditions on the party's endorsement of the agreement (eg disbandment of the UDR). This would be highly undesirable. Sir Geoffrey Howe explained the parliamentary and other constraints which now made it difficult for the British Government to envisage signature before the end of October and which pointed to mid-November as the earliest point at which signature looked like being practicable. Mr King wondered whether signature might take place in the period between prorogation on 31 October and the opening of Parliament on 6 November, recognising that this would mean that Parliament would not be able to debate the agreement before 12 November, ie following conclusion of the debate on the Queen's Speech. The Irish side thought this might be helpful in relation to the SDLP party conference but foresaw great difficulties in the Dail and possibly in Northern Ireland if there was a gap of more than a week between signature and endorsement by the British Parliament. It was left that both sides would reflect on the points made in the discussion and pursue it in the official talks.

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