

E.R.



cc PS/S of S

1. Mr Bloomfield 2. AI 3/K  
 Mr A W Stephens  
 Mr Chesterton  
 Mr Bell

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## ANGLO-IRISH TALKS: SUBMISSION OF DRAFT AGREEMENT TO CABINET

1. As you know, the Cabinet Office are envisaging that the draft Agreement should be put again to Cabinet under cover (as was done last July) of a joint paper by our Secretary of State and Sir Geoffrey Howe.
2. There is a problem over timing. Cabinet Office want the Cabinet discussion to be on 31 October. That leaves little time to reflect in a paper any conclusions reached at the Prime Minister's meeting with the two Secretaries of State on 29 October - and no time to take account of Irish reactions to any new points which, as a result of that meeting, Ministers may wish to put to them. (We might get an instant reaction at the next round of Armstrong/Nally talks on 30 October but Irish officials will clearly want to refer to their Ministers for instructions on any points of substance). I have suggested to the Cabinet Office that it would be better to postpone the Cabinet discussion until 7 November even although this would then leave little time for putting practical arrangements in place. But Mr Mallaby told me yesterday evening that Sir Robert Armstrong still favoured 31 October, and that, if necessary, the Cabinet paper would have to seek approval for the draft Agreement as it stands on the understanding that we were still pursuing the possibility of certain changes. I do not find this an attractive suggestion: obviously we shall have to resolve the point in the next day or two.
3. Meanwhile, we have, as you know, been looking at Mr Mallaby's latest version of the draft Cabinet paper which he first sent to us and the PCO at the end of September. It was clearly unsatisfactory in a number of respects and, with the help

/of Mr Bell,

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... of Mr Bell, I have produced the attached revision of it. It incorporates a number of points which you put to me orally. The following comments may be helpful:-

1. Paragraphs 2, 5 and 6 broadly follow Mr Mallaby's material but are, of course, subject to the outcome of the meeting on 29 October.
  2. Paragraph 4 is new and paragraph 18 ("Conclusions") has been considerably revised. We thought that the Mallaby draft lacked a clear presentation of the <sup>CASU</sup> ~~case~~ for the Agreement and played down the difficulties too much. I am sure that we can improve on paragraph 4 but it is there as a marker of the need for some exposition of this kind.
  3. Paragraph 7 may need an addition to refer to the position which the Irish are adopting on the backing of warrants procedure; but we could better judge this when we have probed further on the topic in the next Armstrong/Nally round.
  4. I have inserted in paragraph 9 a reference which seemed desirable to the Secretary of State of Defence. Otherwise this follows the Mallaby draft but I am doubtful whether Cabinet needs so much detail about the UDR, particularly after the revelations in the Guardian today.
  5. Paragraphs 12-14. The Mallaby material on likely reactions to the Agreement has been substantially expanded.
4. I am sending a copy of the draft as it stands to PS/S of S so that S of S has an opportunity to look at it over the week-end. Obviously, it needs further work but it would be helpful to have S of S's general views on the style and content. We shall, of course, have to carry the FCO with us if it is to be a joint

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paper: we have not so far heard their reactions to  
Mr Mallaby's material.

*J. J. J.*

*for*

A J E BRENNAN

25 October 1985

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CABINET

ANGLO-IRISH RELATIONS: NORTHERN IRELAND

Memorandum by the Secretary of State for  
Foreign and Commonwealth Affairs and the  
Secretary of State for Northern Ireland

INTRODUCTION

The Cabinet decided on 25 July 1985 to discuss the proposed Anglo-Irish Agreement concerning Northern Ireland again at an appropriate stage. The Anglo-Irish talks have since continued under the direction of the Prime Minister and ourselves, and the attached draft of an Agreement has been agreed ad referendum. There are tentative plans for an Anglo-Irish Summit to sign it [next month] [later this month].

THE PROPOSED AGREEMENT

2. The draft Agreement, though now set out in legal form, is, save on [two] points, the same in substance as the one discussed by the Cabinet on 25 July. (These two points [the mention of mixed courts], and the provision for entry into force of the Agreement are discussed, respectively, in paragraphs 5 and 11 below.)

3. The draft thus retains these key features:

clear condemnation of terrorism in the Preamble on page 1;

firm and binding recognition by the Irish Republic in Article 1 that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland, and that such consent does not at present exist;

provision for the establishment of an Intergovernmental Committee (its title is still undecided) which would have no executive or decision-making authority but where the Irish Republic would be able to put forward views and proposals on stated aspects of affairs in Northern Ireland; where questions of North-South co-operation, particularly in the security field, can be pursued; and where determined efforts would be made in discussion to resolve differences;

In various places the text has been tightened up to remove any implication that the Intergovernmental Committee could have an executive role and to make plain that its Secretariat would exist only to service the Committee. At the end of Article 2(b) our retention of decision-making power has been made even more explicit.

4. The Agreement is a carefully balanced package. For the Irish, while stopping well short of even the least of the three possibilities ("joint authority") canvassed in the Report of the New Ireland Forum, it provides an institutional recognition that many of the minority in the North aspire to a unitary State, and look to Dublin to represent their views. It provides reinforcement, both directly and through Dublin, for the position of those among the minority, represented by the Social Democratic and Labour Party, who pursue their political aims without resort to violence, and it thus strikes at the "armalite and ballot box" appeal of Sinn Fein and PIRA. While, without conceding joint authority, we could not secure removal of the Irish constitutional claim to Northern Ireland, we have bound them by the Agreement to de facto recognition of its existing status and to the continuation of that status for the foreseeable future. We have also secured that, through

the mechanism of the proposed Intergovernmental Committee, the Irish can be brought into a dialogue on the important need to improve security co-operation, and have been able to do this without conceding Irish pressure for radical changes in the security forces and system of criminal justice in the North. Although the Agreement does nothing to justify the wilder rumours that have circulated among unionists there is no doubt, as explained in paragraph 14 below, that they will resent and resist the role given to Dublin, and therefore, given that the purpose of the Agreement is to increase peace and stability in Ireland, the balance of advantage to us in concluding an agreement in these terms is, at least in the short term, a fine one. But, as we explain in paragraph 13, we assess the likely adverse reactions to an agreement as containable; and against them must be weighed the considerable acclaim that we can expect from world opinion - and not least from the United States - for ending the stalemate in Northern Ireland affairs that has existed for the past decade.

#### LEGAL MATTERS

15. The sentence on mixed courts in Article 8 on page 15 of the draft Agreement has been altered at our suggestion. It maintains our position, which we have made clear repeatedly to the Irish, that we can give no commitment to the establishment now or in the future of mixed courts but are willing to discuss the question in the Intergovernmental Committee. It now makes clear, in addition, that the Committee would seek the advice of experts, who in our view would include leading members of the Northern Ireland judiciary; and that mixed courts, if ever established, would have to be introduced in the Republic as well as in Northern Ireland. The Irish, after many attempts to persuade us to agree to establish mixed courts within a stated time, have been brought to see that we will go no further than the

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non-committal sentence now in the draft Agreement and, although they wanted something much stronger, have said they will reluctantly live with it. They have rejected our suggestion that mixed courts should not be mentioned at all in the Agreement.)

6. The Irish told us in a recent session of the talks that, in view of our clearly expressed doubts about the possibility of establishing mixed courts in the foreseeable future, they felt unable to maintain their willingness, in the context of the proposed Agreement, to announce their decision to accede to the European Convention on the Suppression of Terrorism. Their accession to the Convention would ease extradition of terrorist offenders from the Republic to the North and would do much to disarm unionist criticism of their attitude to terrorists. The Irish argued correctly that their courts were already being less restrictive on extradition than in the past; and that for the Irish Government to go further than this by acceding to the Convention at this time would expose them to criticism on the lines that persons would be handed over for trial in Northern Ireland by courts in which the minority there had little confidence, and which we were refusing to make into mixed courts.

7. After further discussion the Irish have agreed to announce, in the Communique following an Anglo-Irish Summit to sign the Agreement, their intention (but not actual decision) to accede to the European Convention. They have said that they will introduce legislation into the Dail to prepare the way for accession, and that it might take 12-18 months to prepare the legislation and get it through the Dail. The implication is that the Irish Government would then take a final decision on accession to the Convention, in the light of progress in implementing the Agreement.

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## IMPLEMENTATION OF AN AGREEMENT

8. Earlier in the negotiations the Irish were pressing for "associated measures" which both sides would take in the context of an Agreement, to show that things were changing on the ground as well as on paper through the Agreement itself. We persuaded them that we could not take steps which would provoke unionist reactions to an Agreement to a point where the Agreement itself might be in danger. The negotiations then concentrated on measures which the two Governments might take in rapid implementation of the Agreement. The Irish have already begun to redeploy task forces of the Garda in the border areas - a step which is welcome to the Royal Ulster Constabulary (RUC) although we still need to establish that they will make the necessary sustained effort rather than provide temporary support.

9. The Irish pressed us for changes regarding the Ulster Defence Regiment (UDR), and we have responded to these in consultation with the Secretary of State for Defence. We resisted significant changes and all changes not justified on their own merits. We said that the RUC would increasingly accompany the UDR (and the regular army) on patrols and at vehicle check-points. This development, which accords with existing policy and is already being implemented, should be welcome to the minority community. We also told the Irish that we would take a few other minor but intrinsically useful steps concerning the UDR: that the initial training undergone by recruits to the part-time cadre of the UDR should be increased from eight to 14 days; that the regular army and the RUC would play a greater part in the training of the UDR; and that new recruits to the UDR would not normally make arrests. These steps would not be announced as being a result of the Anglo-Irish talks or at the Summit

to conclude an agreement, though some might be mentioned in the debate in the House of Commons on the Agreement. In addition, the Chief Constable of the RUC is working on a new Code of Conduct for the RUC

underline the principle of even-handedness as between the unionist and nationalist communities in Northern Ireland. We have told the Irish that suitable elements of this Code would be considered for incorporation into the training and standing instructions of the regular army and the UDR in Northern Ireland.

THE SECRETARIAT OF THE INTERGOVERNMENTAL COMMITTEE

10. The Irish were arguing a month or so ago that the British and Irish Secretaries in the small Secretariat of the Intergovernmental Committee should have a partly independent role. Each should have the confidence of his Government and should be able when necessary to act in anticipation of Ministers' wishes. We have said that the Secretariat, apart from carrying out normal secretarial duties as prescribed in Article 3 of the draft Agreement, should act as a channel of communication when the Intergovernmental Committee is not meeting. The two Secretaries could confer and report each other's views, with recommendations as appropriate. In this way, it should be possible to consult closely while retaining full authority where it rests at present. The Irish have broadly accepted this position but may still want to give their element of the Secretariat a higher profile than the Northern Ireland Office think desirable. [In particular, it remains necessary to persuade them that if, in the early days of implementation of an Agreement, Irish Secretaries were to be housed in Belfast, they would become a focus of unionist - and possibly violent attack.]

THE TIMING AND MANNER OF CONCLUSION OF AN AGREEMENT

11. In accordance with the wishes of Cabinet on 25 July, the two Governments have in mind a Summit meeting at a time in November which would allow the two Parliaments to debate the Agreement within a few days of signature. Article 13 of the Agreement provides that it will not enter into force until the two Governments exchange notifications - equivalent to ratifications - of their acceptance of the Agreement. It is clearly agreed with the Irish, and would be announced at a Summit, that these notifications would be exchanged only after the two Parliaments had approved the Agreement. In this way, we should maximise the chance that early unionist reactions to an Agreement will focus on the channel of Parliament.

LIKELY REACTIONS IN NORTHERN IRELAND

12. From our contacts and those of the Irish Government with the SDLP, we believe the latter will support the proposed Agreement as a modest but useful step. They may also, in the wake of an Agreement be prepared to talk to the unionists about arrangements for a devolved government (so ending their refusal to participate in the Northern Ireland political process) but only, it seems clear, if the unionists will agree to some form of power-sharing.

13. The unionist reactions to the proposed Agreement will be very negative. There is no prospect that, in the immediate aftermath of an Agreement, they will countenance a power-sharing arrangement with the SDLP. There is a possibility that, given time, they will see such an accommodation, which would take a wide range of matters out of the scope of an Anglo-Irish Agreement, as serving their interests, but they will first have to learn to live with the processes instituted by the Agreement itself. Although the Agreement will not justify some of their worst

fears - for instance, that it will undermine the RUC - they are likely to greet it in the first instance with large-scale protests, perhaps including withdrawals from Northern Ireland district councils and administrative boards. We cannot rule out some paramilitary activity. However, our contacts with unionist politicians, as well as intelligence analysis, suggest that while there may be some acts of violence and perhaps one-day strikes, widespread violence and industrial action are not very likely. Intelligence suggests that the loyalist paramilitaries are being markedly cautious about their role.

14. The Provisional Republican Army will no doubt engage in acts of terrorism designed in part to provoke violent reaction among the unionists. But, on all the evidence, our best assessment is that adverse reactions to an Agreement from both unionists and PIRA should be containable. We have reviewed our contingency plans for dealing with them.

#### LIKELY REACTIONS IN THE IRISH REPUBLIC

15. [Paragraph by the FCO on Haughey's intentions]

#### INTERNATIONAL REACTIONS: A POSSIBLE FUND

16. Contacts with the United States shows that there is a high probability that the Administration and Congress will warmly welcome an Agreement. Our visible effort to make progress over Northern Ireland through the Agreement will also be welcomed in many countries and will enhance our international standing.

17. We have indications that the United States, and perhaps some members of the European Community, might wish to express their support for an Agreement by financial means. We and the Irish are agreed that this should be so arranged that American generosity should appear as a reaction to the Agreement and not as an inducement to persuade us to conclude the Agreement. Our hope is that the United States,



in welcoming the Agreement, would state its willingness to provide a considerable but unspecified sum of money and that we, in response, would announce our willingness to establish a Fund for the purpose. If American money is to be forthcoming, the Fund will have to be additional to existing public expenditure in Northern Ireland and we understand that the Chief Secretary recognises this. Our preliminary idea is that the Fund would be spent on economic and social advance in both parts of Ireland and on measures to increase contact between them, in line with the policies of the two Governments. We envisage that a considerable part of the money would go to a new venture capital fund to stimulate private investment. It has been agreed with the Irish Government that three-quarters of the money would be spent in Northern Ireland.

## CONCLUSIONS

18. The proposed Agreement would not be an end to itself but a useful step towards reconciliation within Northern Ireland and between the UK and the Republic, and a means of improving our joint efforts with the Republic against terrorists. Whether the Agreement will lead to benefits in Northern Ireland, particularly in security, will depend on how it is implemented in practice. We believe that the Irish Government intends seriously to implement the Agreement. But both Governments will face considerable opposition.

In the short term our relations with the unionists will deteriorate markedly. But they stand to benefit, even if they would not admit it, through binding albeit de facto acceptance by the Irish Republic of the present status of Northern Ireland. They also stand to benefit from improved security co-operation. There will be benefits for the minority, notably that their views will be represented to us by the Irish Government in the Intergovernmental Committee. To the extent that this reconciles the minority to the institutions of Northern Ireland it will benefit the unionists as well, although, again, they are unlikely to recognise it.

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In the longer term there may be a greater chance of political development in Northern Ireland, although it is unlikely the progress will be possible in the short term. There will also be international benefits for HMG, not least in the United States, where it will be of value in ensuring that the Administration continues broadly supportive of the British position in Northern Ireland; and there might also be economic benefits for Northern Ireland from a Fund. On balance we believe that, although there will be difficulties to be faced, the likely benefits from the Agreement to the UK as a whole justify our acceptance of it.

19. Colleagues are invited to agree that, unless there are serious developments in the meantime in Northern Ireland, the proposed Agreement should be concluded at an Anglo-Irish Summit in November and should enter into force after approval by Parliament.

NIO  
FCO

October 1985

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