

Covering SECRET AND PERSONAL



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70 Whitehall, London SW1A 2AS

Telephone 071 219991

Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong oca cvo

Ref. A086/1679

12 June 1986

Dear Robert

I attach a copy of my note of the meeting which I had with the Taoiseach on Tuesday morning, together with a draft of a covering minute to send to the Prime Minister and the two Secretaries of State. We are to meet briefly to discuss this at noon tomorrow.

I am sending a copy of this letter and the enclosures to David Goodall.

Yours ac
Robert

Sir Robert Andrew KCB

Covering SECRET AND PERSONAL

Dft of 12 June 1986

DRAFT MINUTE FROM SIR ROBERT ARMSTRONG TO THE PRIME
MINISTER

Before the latest of the occasional meetings of the Armstrong/Nally group, arranged at the request of the Irish side for Tuesday 10 June, I was summoned to meet the Taoiseach. I attach a record of the conversation at our meeting.

2. From what he said, I inferred that he had three major areas of concern:

a. He was looking forward to his meeting with you in the margins of the European Council at The Hague on 26 and 27 June, and was anxious that that meeting should go well and not be a cause of difficulty or misunderstanding between you. He emphasised more than once his determination to keep closely along side you in the handling of the Anglo-Irish Agreement and related matters in the coming months.

b. I think he was genuinely worried about being out on a limb when he goes to the Dail in October for approval of legislation for the

ratification of Irish Accession to the European Convention for the Suppression of Terrorism. He clearly feels the need to be able to point to visible and significant progress in the implementation of the Anglo-Irish Agreement and particularly in measures to improve nationalist confidence in the administration of justice in Northern Ireland, if he is to overcome scepticism in his Opposition about the Agreement and secure Parliamentary support for ratification. The measure of progress he would most like to see is a decision to introduce three-man courts for cases at first instance in Northern Ireland. I think that he and his Government would settle for something less visible and significant, but think that that would be best. They do not understand the difficulties we see, and they suspect that the reason for our unwillingness to move lies more in the reactionary conservatism of the legal establishment than in actual legal or technical difficulties.

c. I detected some feeling that he might be having trouble with some of his "greeners"

colleagues in Government, who see the Anglo-Irish Agreement as very much his responsibility and measure his success by the degree of progress in its implementation.

3. I understand that the Northern Ireland Office has in mind the possibility of a package of small developments at the next meeting of the Intergovernmental Conference, probably on 17 June. These developments might be a decision to take action about I-voters and something on Irish place names. If that is possible, that will fit in with the Taoiseach's own hopes. I believe that the Northern Ireland Office also accept that there should be a more considerable package of developments in the autumn, after the marching season: they see force in the Taoiseach's concern that if there is no progress in the Intergovernmental Conference, unionists will claim that as the result of their campaign of protest. This could include a decision to amend or abolish the Flags and Emblems Act and the introduction of a code of conduct for the Royal Ulster Constabulary.

4. But the main difficulty will be what, if anything, the autumn package should include on the

administration of justice. While I do not think that three man courts is an absolutely indispensable element in the package, it would certainly be warmly welcomed by the Irish side; and the significance it would carry with them would be difficult to match with other measures in the field of the administration of justice. The Lord Chancellor is strongly opposed to the idea of three-man courts. I think that Ministers will have to decide whether this view is insurmountable, in which case I think you would need to tell the Taoiseach so when you meet him later in the month; or whether there is any future in considering the possibility of three-man courts for the trial of a limited range of offences, or in supergrass trials.

5. You will also need to consider with the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland what should be our objective for your meeting with the Taoiseach in The Hague. Apart from whatever can be said about three-man courts I think that the main purpose of the meeting from our point of view may be to give you an opportunity of reaffirming the Government's commitment to the Anglo-Irish

Agreement, and of explaining more fully to the Taoiseach the problems of handling unionist protest. The meeting will also give him an opportunity of telling you at first hand about his own political problems and needs.

6. If you can find time - and I am well aware of the pressures on you at this time - I think that a short meeting with the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland on all this, before you go to The Hague, would be worth while.

7. I am sending copies of this minute and the note of my meeting with the Taoiseach to the Foreign and Commonwealth Secretary and the Secretary of State for Northern Ireland.

Ref. A086/1683

NOTE FOR RECORD

Accompanied by Mr Goodall (Foreign and Commonwealth Office), Mr Brennan (Northern Ireland Office), Mr Mallaby (Cabinet Office) and Sir Alan Goodison (British Ambassador in Dublin) I went to Dublin on Tuesday 10 June for a meeting of the Armstrong-Nally group, arranged at the request of the Irish side.

2. Before the official meeting began, I was called to one side and asked to go and see the Taoiseach, who evidently intended that what he said to me should be conveyed to the Prime Minister. He was clearly anxious that she should be aware of the concerns in his mind, and his political constraints and needs as he saw them, before she met him in the margins of the European Council on 26 and 27 June.

3. The Taoiseach said that he thought that the Irish Government could reasonably claim to have delivered on their side of the Anglo-Irish Agreement. They had avoided any expression of "triumphalism" and any suggestion that the Agreement was, or was to be seen as, a step towards Irish unity. They had rigorously held to the line that there was no question of joint authority. They had decided to accede to the European Convention on the Suppression of Terrorism, to which we had attached considerable importance, and had made an announcement to that effect. They had supported the actions of the Royal Ulster Constabulary (RUC) at Portadown and elsewhere. They had remained silent after the "day of action" in Northern Ireland. The Taoiseach was, however, worried about our side of the affair. Unless it was possible to make more visible progress, he feared that he would

find it difficult to sustain his position that the Anglo-Irish Agreement had been a move forward entered into in good faith by both sides.

4. On the proposed international fund, the Taoiseach said that a number of important Irish Americans (he mentioned Senator Kennedy in particular) had gained the impression from the Secretary of State for Northern Ireland in his recent visit to the United States that the British Government were not really very interested in financial support as envisaged in the Anglo-Irish Agreement from the United States. This was in marked contrast to the enthusiasm which Irish representatives had shown; and there was a risk of our putting the Irish Government's credibility in the United States in issue - with consequences as serious for the United Kingdom as for Ireland.

5. On the European side, he had had offers of help from the President of the Commission and from a number of Heads of Government. There was no way in which he could explain to these people that the British Government would not let people respond. If it emerged that the British Government was refusing to go along with a European approach, that would have a very negative impact.

6. I made it clear that we had not lost interest in either an American contribution or a European contribution to the proposed international fund. On the American side, it was in no way of our making that the question of the supplementary extradition treaty and the international fund had become linked: that had been a tactical decision taken by Senator Lugar. It looked as if we were within sight of agreement on the extradition treaty, and we would then revert to the question of the fund.

7. On the European side, one possibility would be to make use of the structural funds. But that would involve contributions within the budget, and would be caught up in the Fontainebleau

mechanism. We were willing to pursue the idea of co-ordinated contributions from individual Governments, not through the Community budget. The Taoiseach was obviously keen, if this approach was followed, to try to find some way of putting a "Community" label on the contributions: perhaps they could be channelled through a Community institution. I said that I thought that there might be difficulties in channelling contributions through the Commission.

8. Turning to the provisions in the Anglo-Irish Agreement and its associated communiqué relating to the Royal Ulster Constabulary (RUC) the Taoiseach said he recognised that there had been some progress on getting Ulster Defence Regiment (UDR) patrols accompanied by the RUC. But (for reasons he well understood) that progress had been limited, and there was very little perception of change on the ground. He mentioned in particular that the UDR were still on their own at the Castle Street Gate in Belfast. It had been his understanding during the negotiations leading up to the Anglo-Irish Agreement that it was accepted in principle that the Castle Street Gate should be manned by the RUC and not by the UDR, and he did not know why nothing appeared to have happened. I said that my understanding was that progress on this depended on certain physical changes which would require some construction work: I would look into the present state of progress on this, and see that he was informed.

9. On the question of UDR patrols accompanied by the RUC, the Taoiseach said that the Irish Government had been given (in the Intergovernmental Conference) only figures for one week in March. They did not understand why they could not be given a longer and more recent run of figures. Surely it should be possible for there to be monthly reports on this matter. The Taoiseach also said that they were still waiting to see the RUC Code of Conduct which had been thought to be well advanced at the time of the Anglo-Irish Agreement. I said that I thought

that there might be progress on this after the marching season. The Taoiseach said that there had also been no progress on the introduction of an independent element into the police complaints mechanism in Northern Ireland.

10. The Taoiseach went on to stress the need to give substantial expression to the section of the Anglo-Irish Agreement dealing with confidence in the administration of justice. On supergrass trials, the Attorney General appeared recently to have hinted that they would not be used in future, but no more had been heard; and in the meantime a number of people had been charged on the basis of information from a supergrass informer.

11. The Taoiseach particularly emphasised the importance of instituting three-man courts in Northern Ireland. This would be a "high visibility" change; and it would be particularly helpful to him in handling the passage of legislation in the Dail to ratify Irish accession to the European Convention on the Suppression of Terrorism. This legislation would be brought forward when the Dail resumed in October after the Summer Recess, and would need to be got through by Christmas.

12. The Taoiseach emphasised that the Irish Government were thinking in terms of three-man courts which gave collegiate verdicts; in the event of disagreement in the court, the majority view would constitute the judgment of the court, and there would be no dissenting judgment given. In the course of an appeal neither the fact of a majority judgment nor the basis of a dissenting opinion would be made known to the appellate court. The Taoiseach did not think that the legal and technical difficulties were insuperable. There were precedents for such courts. They were employed and worked satisfactorily in the Irish Republic. The British Government itself had established three-man courts in Ireland after the Invincibles. He understood that there were other precedents for three-man courts

in the British system. What was needed was a political decision to override technical legal objections.

13. The Taoiseach said that he was not looking for major developments in the Intergovernmental Conference (IGC) before the marching season in Northern Ireland, though it would be helpful if agreement could be reached on one or two small matters at the next meeting of the IGC, as a demonstration of progress. The situation could be held on that basis, so long as it was understood between the two Governments that after the marching season more significant developments would happen. It was already apparent that, if there were no progress in the IGC, the unionists would claim that, even if their opposition to the Anglo-Irish Agreement had not led to the formal suspension of the Agreement or of the IGC, it had effectively prevented any progress being made. If this idea were allowed to gain currency, the implications could be serious.

14. The Taoiseach stressed the significance for the Irish Government of three-man courts, and particularly the importance of this development in enabling him to carry in the Dail legislation on accession to the European Convention on the Suppression of Terrorism. Both he and (later) Mr Nally stopped short of saying that agreement to three-man courts in Northern Ireland was an essential and indispensable condition for persuading the Dail to pass the ratification legislation; but the Taoiseach came fairly near to that, and the implication was very clear: that the Taoiseach thought that he would need to be able to show that significant progress had been made or was in the process of being made on ways of improving the confidence of the nationalist community in the administration of justice in Northern Ireland, that the introduction of three-man courts was the most obvious and visible way of demonstrating such progress, and that, if that was not possible, some other significant substitute would need to be found. The Taoiseach concluded this section of his remarks by saying that inability to secure the

passage of ratification legislation would be serious for him politically, but it would also have serious consequences for the British Government.

15. On a point of detail, the Taoiseach said that he understood that the idea still persisted of extradition for questioning: that was an idea that would cause great trouble.

16. Turning to the Anglo-United States supplementary extradition treaty, the Taoiseach said that it was unfortunate that the Irish Government had been requested to assist. They would have been unable to do so without undermining their capacity to influence their contacts in the United States. He had thought that the British Government had understood the Irish Government's difficulties on this, and the request had been an unnecessary aggravation. Nonetheless he hoped that the extradition treaty would now go through quickly. He thought that, if the British Government sought to insist on further changes, there was a danger that the already tenuous basis of agreement in Washington would break down. He suggested that it would create an awkward precedent for extradition relations between the United Kingdom and the Irish Republic if the Anglo-United States supplementary extradition treaty included provisions which enabled the United States judicial authorities to look behind warrants.

17. The Taoiseach referred to a number of matters on which there appeared to be a degree of agreement between unionists and nationalists in Northern Ireland, and on which progress should be possible. These matters included supergrass trials, and the early release of those who gave evidence; the use of plastic bullets; and the use of strip searching, particularly at Maghaberry. The Taoiseach understood that the Chief Constable was looking at the possibility of using water cannon instead of plastic bullets.

18. Turning to political developments in Northern Ireland, the Taoiseach said that he thought that it would be useful if there could be a clear statement from the British Government that greater integration was not a viable way forward. This gave me an opportunity to intervene, to give the Taoiseach an indication of the British Government's intention (subject to the endorsement of Cabinet on 12 June) to proceed to the early dissolution of the Northern Ireland Assembly. That Assembly was now failing to carry out either of the purposes for which it was created; neither the Alliance Party nor the SDLP attended it, and it was being used by the unionists as a vehicle for expressing, in extravagant and often offensive terms, their opposition to the Anglo-Irish Agreement. If it was allowed to run its course to its natural term in October, elections would automatically follow. That time would not be a convenient time for an Assembly election: it would provide an opportunity for reviving the unionist campaign against the Anglo-Irish Agreement after the marching season, at a time which would coincide with the first anniversary of the Agreement. If the Secretary of State for Northern Ireland announced on 12 June the intention to dissolve the Assembly earlier, his statement would include a clear indication that the British Government remained committed to devolution as the right way forward in Northern Ireland.

19. I also took the opportunity of this intervention to say to the Taoiseach that I hoped that the Irish Government would not undervalue the significance to the nationalist community in Northern Ireland and indeed to the Irish Government of the fact that, despite the sustained campaign of protest by the unionists, the British Government's commitment to the Anglo-Irish Agreement remained complete and the activities provided for in the Agreement continued to be carried out. The British Government naturally had to have regard to the effect of developments upon the situation in Northern Ireland, and particularly upon the level of unionist protest. There were

some indications that the unionists were uncertain about the direction and future of their campaign of protest, and that the campaign might be beginning to run out of steam. The present time, just before the beginning of the marching season, would not be a good time for any actions which might reverse that tendency - if indeed it existed - just before the beginning of the marching season.

20. The Taoiseach said that some people were suggesting to him that there was a need for a clear statement by himself and the Prime Minister on the Anglo-Irish Agreement. Such a statement would make it possible to underline again the fact that the significance of the Agreement should not be exaggerated beyond what it really was. I said that I thought that that could usefully be considered between the two Governments, though the Anglo-Irish Agreement was in fact a clear enough document, and there was a risk that any further statement about it, unless very carefully drafted, would be misinterpreted as an indication or hint of an underlying shift in position.

21. The Taoiseach, responding to my earlier point, stressed again the danger of the unionist claim that lack of progress in implementing the Anglo-Irish Agreement was the result of their efforts. He agreed that it would be too provocative to agree major changes now. But it would be important that the IGC should proceed to major changes after the marching season, and before November. The Dail would consider the ratification legislation in the second half of October, and the Irish Government would need a sense of assurance about what would happen in the Intergovernmental Conference in the autumn, if it was to be able to go into the Dail with confidence of securing a successful result.

22. The Taoiseach then asked about his meeting with the Prime Minister in the margins of the European Council at The Hague on 26 and 27 June. He thought that this was going to be an

important meeting, and he would like it to go well. I suggested that it would be better not to use that meeting as an occasion for discussing detailed matters which were best pursued in the Intergovernmental Conference between the Secretary of State and the Minister for Foreign Affairs. Rather, it might be most productive if it could be used as an occasion on which the Prime Minister and he could exchange ideas about the general strategy for handling Anglo-Irish affairs in the coming months, and as an opportunity for each of them to explain his or her own and understand the other's political constraints and needs in relation to Anglo-Irish affairs and the development of the Agreement during the months ahead.

RAH

ROBERT ARMSTRONG

12 June 1986