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FROM: E C HALLETT - SIL
29 MARCH 1989



cc. PS/Secretary of State (L&B) - B
PS/Dr Mawhinney (L&B) - B
PS/PUS (L&B) - B
PS/Sir K Bloomfield - B
Mr Burns - B
Mr Stephens - B
Mr Spence - B
Mr Thomas - B
Mr Miles - B
Mr A Wilson - B
Mr Blackwell
Mr Bell - B
Mr Kirk - B
Mr J McConnell - B
Mr Wood (L&B) - B
Mr May

MR MASEFIELD - B

ARTICLE 11 REVIEW: PAPER ON PROGRESS ACHIEVED SINCE THE SIGNING OF THE ANGLO-IRISH AGREEMENT

It was agreed at the meeting with the Irish in the Secretariat on 22 March that we would pass to them this week the revised text of the "Achievements" paper. This is attached. The changes from the earlier draft are to take account of further comments from the Secretary of State relating to paragraphs 2, 7 and 18 (Mr Leach's minute of 20 March) and Dr Mawhinney's amendment of paragraph 12(i) (Ms Earnshaw's minute of 20 March).

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C O N F I D E N T I A L

PROGRESS ACHIEVED SINCE THE SIGNING OF THE ANGLO-IRISH AGREEMENT
Paper by the British Side

Introduction - The Agreement

1. The British Prime Minister, the Rt Hon. Margaret Thatcher, FRS MP, and the then Taoiseach, Dr Garret FitzGerald TD, signed a formal and binding Agreement¹ between their two Governments on 15 November 1985 with the aims of promoting peace and stability in Northern Ireland; helping to 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 Agreement deals in particular with the status of Northern Ireland, (Article 1), in which both Governments:

- a) affirm 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.
- b) recognise that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland.
- c) declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.

1. Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the ROI Treaty Series No 62 (1985).

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The Agreement also provides for the establishment of an Intergovernmental Conference in which the Irish Government puts forward views and proposals concerning stated aspects of Northern Ireland affairs; in which the promotion of cross-border cooperation is discussed; and in which determined efforts are made to resolve any differences between the two Governments.

2. Since the signature of the Agreement a number of measures and new arrangements have been introduced affecting the lives of both sections of the community in Northern Ireland. Some of these were already in hand before the Agreement was signed. Some owe a lot to the impetus of the Conference and the new and substantive co-operation and dialogue between the British and Irish Governments established under the Agreement. Without a lengthy analysis of each issue, it is clear that many of the measures have benefitted usefully from the views and proposals put forward by the Irish Government.

The work of the Intergovernmental Conference and its Secretariat

3. The Intergovernmental Conference was set up, under Article 2 of the Agreement, to deal, on a regular basis with political matters; security and related matters; legal matters (including the administration of justice); and the promotion of cross-border co-operation. Its establishment (and the Secretariat which services it on a continuing basis) has provided a valuable framework for the conduct of Anglo-Irish relations in so far as matters relating to Northern Ireland are concerned. The Conference has provided a forum which has enabled Ministers and senior officials of both sides to maintain close and frequent contact, which has given them a greater awareness of the political and other realities against which the other side has to operate. It has thus reduced the risk of misunderstandings arising over particular incidents and increased the likelihood of problems being resolved in a spirit of cooperation and without acrimony. It has enabled each side to take decisions within its jurisdiction with greater knowledge and

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awareness of the likely impact and reactions on the other side. It has also been well received internationally, where it has been seen as a major attempt by the two Governments to make progress towards a better relationship between the North and South and a very positive contribution to addressing the fundamental problems of Northern Ireland.

4. The Conference has met frequently since its first meeting on 11 December 1985. In addition there have been a number of other meetings within the framework of the Conference where Ministerial discussions have been held. The Conference business has covered a wide range of subjects, and the Conference has played a demonstrably vital role as a forum for Ministerial contacts between the two Governments when there are important issues to be discussed.

5. Conference meetings provide the opportunity to ensure that progress is made in enhancing and developing, to the benefit of both governments, more effective security co-operation and to discuss political matters in Northern Ireland. Discussions on ways of further enhancing cross-border security cooperation are an important and regular item on the agenda. Although it may not always be possible to publicise in detail the role played by the Conference in any particular matter, these discussions play an valuable part in the development of policy and practice. Thus, for example, the UK Government's proposals leading to the introduction of further Fair Employment legislation in Northern Ireland have been discussed at many Conference meetings. Other subjects which have benefitted from regular discussion include ways of enhancing confidence in the system of justice and improving relations between the community and the security forces. The outcome of many of these discussions is reflected in the more detailed references in the body of this paper. The issues discussed by the Conference are summarised in the Joint Statement published after each Conference meeting.

6. The Secretariat is provided for in Article 3 of the Agreement which states that: "A Secretariat shall be established by the two Governments to service the Conference on a continuing basis in the

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discharge of its functions as set out in this Agreement." It is responsible for making the arrangements for Conference meetings. This includes the holding of preparatory discussions between officials, agreeing the agenda between the two sides, recording the discussions at the Conference itself, and, as appropriate, ensuring that work agreed on at the Conference is taken forward.

7. The Secretariat was established at Maryfield outside Belfast. It is headed by British and Irish joint secretaries, with a small supporting staff. As agreed by the two Governments at the first meeting of the Conference, the Secretariat has functioned as a continuing channel of communication between the two sides on all matters covered by the Articles of the Agreement.

8. The Secretariat has played an important role, particularly in improving each side's understanding of the other's position. It is a facility for each Government to pass a prompt message either to advise the other of some forthcoming action or to explain the reason for some decision or action which has been taken. The Secretariat has been able, in many cases, to resolve problems amicably without publicity.

9. Though neither a 'complaints bureau' nor a body with operational responsibilities for security matters, the Secretariat has served as a forum for each side to explain the broad aspects of its security policy and to convey to the British authorities at high levels the views of the Irish Government in respect of the interests of the nationalist minority. In particular cases the speed and effectiveness of the Secretariat as a channel of communication have been crucial. It also offers a helpful source of prompt information for the British side about developments or events in the Republic such as the outcome of court proceedings or the successes of the security forces.

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10. The Secretariat has also provided a forum for the exchange of information on aspects of prisons policy in Northern Ireland. In this important area, the Secretariat has helped to identify and resolve problems that could otherwise have become irritants in Anglo-Irish relations.

11. Set out below is a summary of the progress made under each main area of activity of the Agreement.

Rights and identities of the two traditions; human rights and the prevention of discrimination.

12. Progress has been achieved in the following areas:

(i) Irish Language

- Irish views on the place in the curriculum of the Irish language were taken into account during the formal consultation on education reform in Northern Ireland;
- guidance has been issued to Government Departments on the use in official business of Irish personal names and on the handling of correspondence in Irish.
- Ordnance Survey of Northern Ireland (OSNI) has produced and published a dual-language map and gazetteer of Northern Ireland;
- a question on the Irish language will be included in the 1991 Census;

(ii) Legislation has been introduced in the 1988/89 Parliamentary session to end the anomaly whereby 'I' voters have been unable to vote in District Council elections. (The Elected Authorities (NI) Bill)

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- (iii) The Flags and Emblems Act (NI) 1954 has been repealed.
- (iv) The Fair Employment (NI) Bill which has been introduced in the current Parliamentary session provides for further measures to prevent discrimination and reduce inequality in employment, including:
 - a) compulsory monitoring of religious composition of workforce;
 - b) making failure to do so a criminal offence;
 - c) establishing a new, and strengthened Fair Employment Commission (and a new Fair Employment Tribunal with exceptional powers);
 - d) economic sanctions - withholding tenders/grants from those not practicing employment equality;
 - e) a new Code of Practice to be drawn up by the new Commission;
 - f) the inclusion of affirmative action measures in the Code which will be legally enforceable when included in Directions of the New Commission.
- (v) The Police have been given greater powers to control parades and marches which are likely to give rise to provocation. (Public Order Order, 1987);
- (vii) The law on prevention of incitement to hatred has been strengthened.
(Public Order Order, 1987).

13. The government has provided for additional public expenditure to help tackle the problems of disadvantaged areas of Belfast under the "Making Belfast Work" programme launched in July 1988 and the

"Strategy for Action" announced in January 1989. A similar, but more limited initiative for Londonderry was launched in December 1988.

Role and composition of Public Bodies

14. The UK side has provided the Irish side with briefing on the arrangements for public appointments in Northern Ireland and provides information about forthcoming vacancies. The Irish have put forward views on the role and composition of the public bodies referred to in the Agreement.

Security Policy, Relations between the Security Forces and the Community, and Prisons Policy.

15. The British side recognises that creating wider and stronger public support for the police and the armed forces in Northern Ireland is as essential in bringing peace, stability and reconciliation as progress in political, security and economic policies. The Conference has thus devoted considerable attention to ways of improving relations between the security forces and the community. The Irish side have put forward a number of proposals in this area. Measures taken include:

- explicit confirmation of the policy pursued since 1984 that, wherever possible, patrols by the Army (including the UDR) that are likely to come into contact with the public should be accompanied by a member of the RUC;
- improvements in the procedure for handling complaints against the police, including the establishment of an Independent Commission for Police Complaints (Police Order 1987);
- the RUC has made considerable efforts to increase the level of recruitment from the minority community;

- The RUC Chief Constable has introduced a new Code of Conduct for all RUC officers (Placed in House of Commons Library on 15 March 1988);
- The Police Authority for Northern Ireland and the Chief Constable of the RUC have jointly written to District Councils proposing a widely representative scheme of police/community liaison committees based on police sub-divisions;
- The forthcoming Police and Criminal Evidence (NI) Order will introduce a statutory requirement for the police to liaise with the local community;
- The Army has introduced new procedures to ensure that, wherever possible, allegations of misbehaviour against members of the armed forces will be resolved with a response to the complainant within 3 weeks;
- An NIO and Security Forces group has been established to monitor and assess trends and patterns of allegations about misbehaviour of members of the security forces and the speed and effectiveness with which they are resolved, and to feed conclusions back to RUC and Army operational command structures for action.

16. In June 1988 the Secretary of State announced a special review of all the remaining special category life sentence prisoners, and shortly afterwards a special review of the remaining Secretary of State's pleasure prisoners who had served more than 8 years. Details of the results of the first stage of the SOSR review were made public shortly before Christmas, and the results of the special category review should be available fairly early this year.

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Legal matters, including the Administration of Justice

17. A number of improvements have been made in the system of justice in Northern Ireland. These are intended to be of benefit to all in the community, and are also fully consistent with the objective of improving the confidence of the minority community in that system. These include:

- making all arrest powers exercisable only on the basis of reasonable suspicion (Emergency Provisions Act (EPA) 1987)
- reducing the maximum period that a suspect can be held without further Ministerial authority from 72 to 48 hours (EPA 1987)
- establishing statutory right of access to a solicitor within 48 hours of arrest (EPA 1987)
- providing that suspects are entitled to inform a friend or relative of their arrest and whereabouts (EPA 1987)
- instituting annual independent reviews of the Emergency Provisions Acts, and establishing a fixed term of 5 years on those Acts. (EPA 1987)
- statutory changes to the admissibility of confession evidence, to make clear that confessions obtained by the use or threat of violence are not admissible and that confessions can be excluded in the interests of justice (EPA 1987)
- new powers for scheduled offences to be heard outside Belfast.
- regular publication of statistics on the operation of the EPA.

- a number of measures have been taken in recent years to reduce the delay between first remand and trial, which for most cases has been cut since 1985 by nearly half.
- Under the EPA Amendment Order 1986, a number of offences were added to those which the Attorney General is capable of certifying out of the scheduled mode of trial.

And in the near future

- the Police and Criminal Evidence (NI) Order will provide the same safeguards for persons detained for police questioning under the ordinary criminal law as are provided in England and Wales in the Police and Criminal Evidence Act 1984.
- a non-statutory Guide to the Exercise of Emergency Powers will be published and made widely available.

18. Several developments have continued the process of enhancing confidence and reducing adverse comment in respect of the administration of justice. The time spent in custody by prisoners on remand has been reduced. Since 1985 no trials have been commenced on the basis of the uncorroborated evidence of an accomplice. (Further trials on this basis cannot however be ruled out, as the strict criteria on the admissibility of such evidence have not been changed.

19. There has been continuous discussion of extradition and related matters, within the framework of the Conference in the light of the shared concern of the two governments to ensure that fugitive offenders are brought to justice. A significant development has been the narrowing down by the Irish Government of the political offence exception by means of legislation to enable them to ratify

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the European Convention on the Suppression of Terrorism. The two governments have also reaffirmed the importance of making use of the Criminal Law (Jurisdiction) Act 1976 and the Criminal Jurisdiction Act 1975 in appropriate cases.

Security Co-operation

20. Although the Conference has no operational responsibilities, it has provided the framework through which security co-operation has been developed and extended. Many of the details must remain confidential but progress has been made in each of the areas identified in the Agreement including joint threat assessments, the exchange of information, liaison structures, technical co-operation, training and operational planning. As well as the provision for regular Ministerial discussion of security matters at the Conference, there is now a series of regular meetings between the two police forces at headquarters and operational levels under the direction of the Chief Constable of the RUC and the Commissioner of the Garda Siochana. These meetings are concerned with a wide range of operational, technical and communications matters and are designed to improve the day to day co-operation between the two forces. Among the procedures agreed by the two chief police officers is one for close co-operation in dealing with suspect terrorist devices located near the border. This procedure has been used on a number of occasions and has proved of great benefit to the bomb disposal experts on both sides. It is the firm intention of both police forces to achieve further improvements in co-operation using the new structures which have been established under the auspices of the Conference.

Cross Border Co-operation on Economic, Social and Cultural Matters

21. The most significant achievement in the field of economic and social co-operation under Article 10 has been the establishment of the International Fund for Ireland². This has already received contributions of more than \$120 million from the United States, Canada and New Zealand. The Fund is also due to receive contributions of 15 million ECU a year (about £10 million) from the European Community starting in 1989. From the outset, the Fund adopted a carefully structured approach to the allocation of the money entrusted to it. By 30 September 1988 the Fund had approved assistance in excess of UK£26,500,000 to over 850 projects, which holds out the prospect of some 4,500 new permanent jobs, the preservation of 1,500 more and provide 4,000 temporary jobs in construction. The work of the Fund has involved close, practical cross border co-operation at many levels. As it moves into the second phase of its existence, the Fund is devoting a greater proportion of its resources to the areas of greatest need, both in Northern Ireland (which receives 75% of the resources disbursed by the Fund), and in the six border counties of the Republic. The Fund has also established two investment corporations in Northern Ireland and the Republic respectively.

22. There has also been discussion, under the auspices of the Agreement, of further cross-border cooperation on tourism, roads, transport, water quality, and health, as well as consideration of social and economic problems in the North-West.

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2. "Agreement between the Government of the Republic of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the International Fund for Ireland."