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14

S E C R E T

OIFIG AN AIRE GNOTHAI EACHTRACHA

14 May, 1992

MEMORANDUM FOR GOVERNMENT

Round-Table Talks on Northern Ireland

Background

1. At the Anglo-Irish Intergovernmental Conference of 27th April, both Governments agreed a gap of about three months between Conference meetings to allow round-table talks on Northern Ireland to resume on the agreed basis. This basis was set out in a statement issued by Mr. Brooke on 26 March 1991, agreed after prolonged negotiations between the two Governments. It envisages talks in three strands. The first, dealing with internal relationships in Northern Ireland, is chaired by the Secretary of State, and involves the SDLP, UUP, DUP and Alliance parties. The second strand, to be chaired by Sir Ninian Stephen, a former Governor-General of Australia, will involve the two Governments and the four Northern parties and deal with North/South relations. It will open in London, continue in Belfast and later meet in Dublin. The third strand will be between both Governments only, dealing with East/West issues. It is agreed that the three strands will be launched "within weeks" of each other, that confidentiality will be maintained and that "nothing will be agreed until everything is agreed". It is accepted by all that the objective "of achieving a new and more broadly based agreement (i.e. than the Anglo-Irish Agreement) rests on finding a way to give adequate expression to the totality of relationships".

Developments to date

2. Strand one of the Talks resumed in Stormont on 29th April. The initial discussions, which were constructive in tone, agreed some very broad principles and themes. On May 11th the four parties tabled proposals for new institutions in Northern Ireland. These are being currently examined in subcommittee and will be discussed in plenary on Friday 15th May.

SDLP Proposal

3. The SDLP proposal is for an EC-type structure, with a six-member executive commission comprising three directly elected members and three members appointed by the British and Irish Governments and the EC respectively. This would be complemented by a separate elected Assembly (modelled on the European Parliament) and by a North/South Council of Ministers which would have responsibility for the overall development of relationships between both parts of Ireland.

Ulster Unionist Party

4. The UUP paper proposes an elected Assembly, which would in turn elect Executive Committees to oversee the social and economic matters devolved by Westminster to the Assembly, and also perhaps discharge some consultative role on legislation, until such time as some legislative powers could be devolved to the Assembly. Chairmen and their deputies would be chosen in relation to party strengths in the Assembly. Non-executive committees would deal with the remit of the present Northern Ireland Police Authority and with North/South relations.

Democratic Unionist Party

5. The DUP proposes an Assembly which would elect committees to administer devolved matters but with more elaborate provisions to ensure that Chairmanships and Deputy Chairmanships were allocated on a proportionate basis (the D' Hondt Rule) and rather more thoughtful measures on protection of the minority (e.g. 30% of the Assembly could refer a bill to the Secretary of State to adjudicate whether it was discriminatory). The Assembly would be able to legislate on the devolved matters, and would have either a consultative or amending role on Westminster legislation, depending on the nature of the Bill. The paper advocates the "greatest possible role in security matters" for the Assembly, but implies a consultative rather than a decisive function. It proposes a "non-departmental committee" to deal with "External affairs", i.e. relations with the rest of Ireland.

Alliance Party

6. The Alliance paper proposes an Assembly, with a small executive drawn from and responsible to it, but appointed by the Secretary of State in accordance with pre-defined criteria which would ensure power-sharing and a membership reflecting the balance of strengths in the Assembly. It would have a weighted majority requirement in the Assembly and be complemented by backbench committees.

Divergent views and objectives

7. These papers reflect the divide between the nationalist and unionist view of the purpose of the talks. The agreed objective of a "more broadly based agreement" is interpreted by unionists as meaning something they can agree to, i.e. which reduces or eliminates Irish Government influence and

is less problematic for them than the present Agreement as regards the status of Northern Ireland within the UK. The UUP objective is to convert the Anglo-Irish Agreement from a North/South agenda, which they see as challenging this constitutional status, to an East/West basis, which they would interpret as confirming it. The nationalist interpretation of the agreed objective is essentially a deeper agreement, reflecting an even greater flexibility of the British Government on the constitutional status of Northern Ireland and a stronger North-South dimension.

Tactical differences

8. This divide is reflected in a nationalist insistence that the talks, including strand one, are primarily about conflicting identities arising from the relationship between unionism and nationalism in the island of Ireland and that the constitutional future of Northern Ireland must be treated as open. Unionists are emphatic that the constitutional future of Northern Ireland as part of the UK is not in practice open and the real agenda is therefore a devolved system 'for the governance of Northern Ireland within the United Kingdom'. They wish this to be endorsed by both Governments in the other two strands and, ideally, accompanied by a revision of Articles 2 and 3 of the Irish Constitution. There is a corresponding tactical difference: The unionists interest is to have maximum agreement on internal issues in strand one. The SDLP fear this would enable the Unionists to go into strand two, if indeed they went at all, on the basis that the Anglo-Irish Agreement was demonstrably now the real barrier to progress in Northern Ireland, thus increasing pressure for its removal and greatly reducing the prospect that strand two could produce any "Irish dimension" which Northern nationalists would consider an acceptable replacement for it. Their interest

therefore is to keep all issues as open as possible until strand two.

Agreement on some organisational aspects

9. The discussions to date confirm that there is broad agreement between all the parties on several organisational aspects of devolution. For example, all subscribe to an eighty-five seat assembly, based on existing Westminster constituencies, directly elected by PR, and to some form a local control of a range of economic and social matters and which would involve both communities in some degree. Moreover the prospect of devolution has strong personal attraction for many local politicians on all sides, who have been thwarted by the political vacuum within Northern Ireland. The difficulty arises from different approaches to the constitutional issue, leading to contrasting assessments whether participation in a devolved administration is politically sustainable. The Unionists could probably persuade their electorate to accept some degree of power sharing in return for neutralising the Agreement. However the SDLP electorate also saw the Agreement as a symbolic shift in the British position and would not wish their leaders to be party to reversing that. The SDLP are also acutely aware that Sinn Fein and the IRA would devote their utmost efforts to destroying a devolved administration and that any impression that the SDLP had "sold out" on the national issue would greatly add to their political vulnerability in such circumstances.

British Role

10. The British have carefully refrained from revealing their objectives in the talks, beyond an ostensibly disinterested commitment to advancing the process on the agreed basis. Their motives probably reflect their standing commitment to

devolution, as a way of keeping the problem at arms length, and a desire to entice the Unionists back into the system. They have refused unionist demands for peremptory renegotiation of the Agreement, both because they themselves set considerable store by the joint position in Article One that any change in the status of Northern Ireland would only come about with the consent of a majority there, and because of the likely negative effects which resiling from the Agreement would have on Irish and international opinion, particularly in the US. These difficulties would not of course arise with agreed change. It is not clear what replacement model they have in mind, and it seems likely that there are widely varying levels of scepticism and of interest regarding the talks within the British system as a whole. It is possible that some may hope that a repackaged Sunningdale system (including a Council of Ireland), linked to a recasting of the Agreement on an East-West basis, might reconcile the different positions. Probably their collective position is essentially a pragmatic one, ready to explore on a limited "fail-safe" basis any area of agreement which may develop from the process. It cannot be excluded that they may sense more "give" in nationalist opinion, particularly in this jurisdiction, than on the Unionist side and that as the process develops they will be tempted to throw their influence on the side of accommodating the Unionist position, perhaps beyond the point which nationalist opinion as a whole would consider a fair balance between the conflicting aspirations. Their practice in strand one so far has been to seek to establish the "lowest common denominator" between the parties, which in practice tends to register only those elements unionists agree to. This highlights the danger that they could be prepared to trade significant elements of the Agreement in return for relatively minor advances towards an internal structure.

Likely issues in strand two

11. It can be assumed that the Government position in the Talks will reflect the strong wish of the public here to advance the cause of peace and will be concerned to establish how this can best be done. The principle of devolution in itself is not at issue, since the Government are formally committed under Article 4 of the Agreement to supporting a policy of devolution on a basis of "widespread acceptance throughout the community". The Unionist refusal to contemplate devolution while the Anglo-Irish Agreement is in operation, suggests that the Agreement and, by extension, the Irish dimension and the constitutional question, will be the central issues in strand two, rather than the actual mechanisms of devolution.

12. In strand two the Government will be required to take a position as between the two conflicting viewpoints: The Unionists (and perhaps the British) will argue that the way to progress is the fullest possible acceptance of the constitutional status of Northern Ireland within the UK. It will be urged that this, particularly if it included a revision of Articles 2 and 3 of the Constitution, would open the way for neighbourly North-South cooperation in many new fields, perhaps even leading to convergence in the long term. Northern nationalists will argue strongly that such a confirmation of the UK status of Northern Ireland would be a denial of their Irish identity, which aspires to something more than a share of power within the UK. They will advocate constitutional structures for Northern Ireland which accommodates both identities on as equal a footing as possible and enhanced North-South links. Both sides will maintain that their approach would reduce violence, the Unionist approach by closing the door on IRA hopes, the nationalist approach by offering a constitutional alternative which precludes the IRA representing themselves

as the only champions of the nationalist position in Northern Ireland.

13. The Anglo-Irish Agreement is the starting point for the talks process, and must be the fall-back, if talks should fail. The Government's position will tend to be measured against its provisions. In Article One of the Agreement the affirmation that there would be no change in the status of Northern Ireland without the consent of a majority there is associated with a joint commitment to Irish unity if a majority in Northern Ireland so wished. It thus balances Irish acceptance of the principle of consent with British acknowledgement of the legitimacy of unity. In the preamble the two Governments recognise "the need for 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". Other procedures of the Agreement, and the establishment of the Intergovernmental Conference and the Secretariat, accord the Irish Government a specific role in relation to Northern Ireland. The Agreement therefore is seen by nationalists as a significant British acknowledgement of the validity of both identities and aspirations in Northern Ireland. Simply to reverse these developments could give rise to considerable political outcry and is unlikely to be a desirable option for the Government.

14. It is suggested therefore that while the Government should remain open in principle to a new and more broadly based agreement as an outcome from the talks, it would be important that these should involve no reversal of, and should if possible enhance, the provisions in the Anglo-Irish Agreement to recognise and respect the identities of the two

communities in Northern Ireland and the right of each to pursue its aspirations by peaceful and constitutional means. It would seem important also that the "Irish dimension" of any new arrangement should be at least of equal scope and potential to that contained in the Agreement and should be in a form acceptable to constitutional nationalists in Northern Ireland.

15. Whether new arrangements satisfying these criteria can also prove acceptable to the unionists is problematic. Unionists will find it difficult to accept anything which gives any role to the South. British pressure has up to now always been a necessary, even if not a sufficient condition for Unionist political movement. Both the ground rules for the Talks, giving the unionists, like everyone else, a veto on the outcome, and British reticence on their own underlying aims, leave open to question whether such pressure could or would be applied. A related question is how "deep" any new arrangements might go. It is explicitly agreed by all that constitutional issues may be raised in the talks. The Government will need to consider their response, both on the tactical and substantive level, to almost certain unionist demands on Articles 2 and 3 of the Constitution. On this, and on other aspects, the assessment will presumably depend on the political attractions and balance of a package as a whole, and the likely components may emerge clearly only in the course of negotiations.

Timing and Practical Issues

16. It is too early as yet to be certain that the Talks will move to strand two. The recent deliberate leaking of the SDLP submission, presumably to rally unionist opinion against it, shows the fragility of the process. Some elements of unionism will be very reluctant to move to strand two without substantive agreement in strand one.

However the British and others of the unionists will still be anxious to explore the possibilities of strand two, probably sooner rather than later. The prudent working hypothesis is that strand two will begin early in June, as both sides envisaged at the last Conference. Sir Ninian Stephen has made tentative plans to travel from Australia on 24th May for initial briefing. The Government will therefore face, as a matter of great urgency, decisions on various organisational aspects, such as the choice of the Ministerial team for the talks, and the implications for Government business of the heavy demands which may be placed on the negotiating team, including probably during the referendum campaign. A number of procedural aspects will require agreement between Sir Ninian Stephen, as Chairman, and the participants. Contacts are in progress with the British at official level to clarify the options on these and other organisational details, such as venues in London and Dublin (Dublin Castle ?), numbers per delegation and logistical issues.

17. This memorandum is intended as background information for an opening discussion in Government of the issues which the Talks process will raise in the immediate future. In the light of that discussion, further papers can be submitted on specific issues, including outline arrangements of various models which might be developed as proposals in strand two, for the urgent consideration of the Government.

ROINN AN TAOISIGH

Uimhir.....

Government Meeting on 15th May, 1992.

Northern Ireland etc.

Taoiseach,

Referendum

The last day for making the Order fixing dates is Monday. The Minister for the Environment proposes to make the Order late tomorrow (Friday) fixing 18th June as polling day. He will fix the time for voting as between 9.00 a.m. and 10.00 p.m.

There may be some problems about "difficulty" Orders about which I can speak to you separately.

Northern Ireland

The Foreign Affairs Memorandum sets out the background to the current Talks, as a basis for discussion at Government tomorrow. The essential questions are, I think:-

1. What attitude do the Government wish to take to Strand II and, in particular,

- what form of institutional arrangements do they seek and
- what is their attitude to Articles 2 and 3?

Work is going ahead, following your meeting this morning, in Foreign Affairs and here, on possible forms of institutional arrangements. It would be desirable for the Government to decide on their bottom line on this. Essentially, this might be that any institutional arrangements must involve Dublin in some way or another.

[This has been the position since

- (1) the Government of Ireland Act 1920 - which looked to a Council of Ireland which the British King publicly declared he would wish to see leading, eventually, to reconciliation throughout the entire island;
- (2) the Sunningdale arrangements which envisaged another type of Council of Ireland;
- (3) the Anglo-Irish Agreement arrangements, which established an Anglo-Irish inter-Governmental Conference etc.

ROINN AN TAOISIGH

Misc.
F. 2.

Uimhir.....

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Any arrangement which did not include this involvement could be seen as an abandonment of the idea of Irish unity - and a rowing back from the Anglo-Irish Agreement of 1985 etc. etc.]

However, to obtain what we want in this particular area, and to involve the Unionists, we must offer something of worth to them. It is hard to see what precisely this could be. One element, admittedly slight, at present, would be an institutional arrangement for their involvement in negotiations in Brussels on Structural Funds, CAP, future Treaty changes etc. Another could be an institutional arrangement for greater security cooperation within the island of Ireland. Again, there are obviously tricky aspects to this. Another would be institutional involvement in the resuscitation of border areas North and South, with community, London and Dublin funds. Another would be institutional involvement in equality legislation in Northern Ireland. All this will be subject to further consideration.

Attitudes to Articles 2 and 3 would depend to a considerable extent on the outcome of discussions on the institutional arrangements for North/South cooperation and/or reconciliation; and it should, at this point, perhaps, be unnecessary to try to devise an answer to this question now.

2. The second aspect of the discussion tomorrow should be the nomination of Ministers to represent the Government in Strand II.

I would suggest the Ministers for Foreign Affairs and Justice, with whatever additions are considered necessary. (It is worth recalling that in Sunningdale the Taoiseach and six Ministers attended the negotiations. For the Anglo-Irish Agreement negotiation, the detailed discussions were supervised by a Cabinet Committee consisting of the Taoiseach, the Tánaiste, the Minister for Justice, the Minister for Foreign Affairs, and the Attorney General, with associated officials. A similar arrangement would probably be helpful on this occasion also.



Dermot Nally
14th May, 1992.

c.c. Mr. Noel Dorr. Secretary, Department of Foreign Affairs.
Mr. Joe Brosnan. Secretary, Department of Justice.
Mr. Sean O hUiginn. Asst. Sec. Dept. of Foreign Affairs.