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Summary of Committee Meeting, Friday 2nd October 1992

Morning Session

1. Dr. Paisley sought confirmation that no papers had been agreed in Dublin. This was confirmed.
2. There was an essentially repetitive discussion of the status of Northern Ireland. Dr. Paisley charged that if the nationalist side did not accept the status of Northern Ireland as part of the UK then they were seeking to make the nationalist view prevail. The two options were incompatible. Irish Ministers reaffirmed the position as set out in Article 1 of the Anglo-Irish Agreement and appealed to the DUP to address the underlying realities rather than mere words.
3. Mr. Robinson, and to a lesser extent the UUP, again sought assurances that if agreement were reached the Irish Government would seek to amend the Constitution. Irish Ministers reaffirmed the Irish position as stated. They said the key point was to give adequate expression to nationalist aspirations.
4. There was some discussion of the practical implications of the Irish proposal. The UUP and Alliance representatives expressed doubts on its accountability and workability. Irish Ministers and the SDLP pointed to the successful European precedent.

Seán O hUiginn
5 October, 1992

Report of Meeting of the Committee of Strand Two.
Friday 2nd October, 1992
(Morning Session)

1. The Chairman expressed his appreciation that Mr. Mallon was not now insisting on a debate on notetakers as a condition for agreeing to the preparation of a report. Sir Ninian said the draft report would be as neutral and as aseptic as possible. It would be considered in the mini-Committee on Wednesday, ad referendum to the full Committee on Thursday. The report would deal with the position as of the date it was concluded. Participants would be free to refine their positions next week, and it was those refined positions that would be reflected in the report. The Chairman then invited further discussion of the Irish paper on Institutions.

2. Dr. Paisley drew attention to the principle that nothing was agreed until everything was agreed. He asked whether anything was agreed in Dublin. He insisted on his right to have clear information on this point in the light of conflicting reports which had been made to him as to whether or not there had been progress in Dublin. The Chairman said that his recollection was that nothing had been agreed, either formally or informally. There had been a long discussion which some thought useful, and other perhaps not. A debate on "could" versus "would" in the Irish draft had left the "could" text unchanged. Sir Ninian said he could not supply Dr. Paisley with documents as there were none and he could not "regurgitate" the discussion.

3. Dr. Paisley raised again the position of the Irish delegation on the Constitutional issue. The Tánaiste replied that this had been debated at length, the Irish delegation had said what they had said. They did not wish this issue to "cannibalise" the whole discussion. They had already revealed their thoughts and that should be final.

Dr. Paisley asked whether that would be clear in the report. If in fact nothing had been agreed, then that should be made clear. Sir Ninian observed tartly that Dr. Paisley was suffering from a self-inflicted difficulty in this regard.

4. Mr. Mayhew confirmed there had been no agreement in Dublin. There had been a lengthy discussion of a number of issues. He agreed these discussions had been valuable. Those who had attended had been better informed at the end of the discussion than at the beginning. He assumed the Chairman's report would reflect that position. Dr. Paisley indicated that he was happy with that. Dr. Alderdice said that one principle had been agreed on combatting terrorism. Mr. Robinson confirmed that they had received a copy of that text.

5. Dr. Paisley inquired whether a reference to the status of Northern Ireland in paragraph 19 of the Irish draft implied that they rejected the proposition that Northern Ireland must continue as part of the United Kingdom. If they did so, then one (nationalist) version of the status of Northern Ireland would indeed prevail. The Tánaiste replied that the key issue was the recognition of the two traditions. The old philosophy that there was only one tradition worth assenting to was a stale approach and would not bring results. Dr. Paisley objected that the text referred to status, not philosophy. The status of Northern Ireland was not negotiable. It was an integral part of the United Kingdom. If the Irish delegation did not accept that, they were rejecting the union. If the nationalists view prevailed over the unionist, that implied a change of status in Northern Ireland. The two positions were incompatible and could not be reconciled.

6. The Tánaiste said that the key word was "prevail". He recalled again that the Irish Government had in a formal

agreement affirmed that any change in the status of Northern Ireland would come only with the consent of a majority of the people there. That proposition had the support of the two Governments. Dr. Paisley said that the status of Northern Ireland was not defined in the Anglo-Irish Agreement. If the basis of the Anglo-Irish Agreement was recognition of the status of Northern Ireland as an integral part of the United Kingdom, that should be spelt out. He asked whether the Irish Government accepted that.

7. The Tánaiste recalled the long debate on this issue in Lancaster House. He referred again to Article One of the Agreement, subscribed to by both Governments. He read the text of the Article, including Article 1(c). He said clear words needed no interpretation and clear answers had already been given. Dr. Paisley asked whether the status of Northern Ireland had been changed by the Anglo-Irish Agreement. The Tánaiste said that the two Governments had signed the document with clear views on this issue. Mr. Robinson enquired whether the reference to consensus in paragraph 19 meant that if there were agreement on underlying issues, there could then be consensus on the status of Northern Ireland as part of the United Kingdom.

8. The Minister for Industry and Commerce drew attention to the next sentence in the text, that the constitutional debate was merely the formal reflection of the underlying divisions. He appealed to the DUP to recognise that the issue could be dealt with only by addressing the reality, and not merely by words. The Irish Government were anxious to come to grips with the reality. They sought to recognise that the division did exist and to create institutions which would draw things together. The main difficulty was the non recognition of the nationalist tradition, whose allegiance and identity also required expression.

9. Mr. Robinson objected that if the Irish Government had not wanted discussion of this aspect, they should not have mentioned it in their document. The DUP had no problem recognising divisions. The problem was that the Irish Government had not recognised the state of Northern Ireland. There was a need not only to satisfy nationalists, but also to satisfy unionists who said that recognition of the status of Northern Ireland was necessary for their identity. Minister O'Malley pointed out that the Agreement expressly said there would be no derogation from sovereignty. Mr. Robinson said that both countries claimed jurisdiction in Northern Ireland. Minister O'Malley said that Mr. Robinson knew very well what the terms of the Agreement meant. He appealed again to put an end to harping on words. There would be more progress if the negotiations addressed the reality.
10. Dr. Paisley said he had heard the Secretary of State saying that in any new Agreement the British wanted the status of Northern Ireland spelt out unambiguously. That was an admission that the Anglo-Irish Agreement was not clear on the issue of status. The Labour Opposition spokesman, asked about this issue at the time of the Assembly, had said that the status of Northern Ireland had been changed by the Agreement. The Tánaiste said that everything was open for discussion in the negotiations. They had heard the views of the British Government. As regards the view which Dr. Paisley had attributed to a Labour spokesman, the Tánaiste pointed out that Article One also covered the possibility of change agreed by both Governments. The basic point in the Irish paper was that a new Agreement would not be reached by making one view prevail. That was consistent with what both Governments had signed. That signed document was not a discussion document. This element would also have to be reflected in any new Agreement.

11. Mr. Robinson enquired whether the Irish Government took the view, contrary to that of the British Government, that agreement on constitutional issues could not be "unambiguous". He enquired again whether the Irish Government could accept the status of Northern Ireland as part of the United Kingdom if all other arrangements were agreed. The Tánaiste said that consensus could flow only from agreement on how to manage the underlying divisions, of which the constitutional debate was merely the reflection. Minister O' Malley said that what would certainly not work was continued emphasis on the unionist identity as the official and sole allegiance of the State. The nationalist position had to be recognised. This had not happened so far. To debate these issues exclusively in terms of present arrangements was sterile. He quoted the last sentence of paragraph 19, that discussions of constitutional aspects should not be made a substitute for addressing the original divisions themselves. He appealed again for all sides to address the substance of the underlying divisions.

12. Mr. Robinson enquired again whether the Irish Government could see a position where it could recognise the status of Northern Ireland as part of the United Kingdom if the divisions were healed. Minister O' Malley said that this discussion had come up earlier in Strand Two in almost exactly the same form. He recalled the points made by a number of Ministers at that time. The Anglo-Irish Agreement had been signed with the United Kingdom of Great Britain and Northern Ireland in 1975. The country sat in the United Nations Security Council and in the European Council under that name. The Irish Government dealt with it under that name on a daily basis. He said the terms of Article 2(b) of the Agreement should allay any doubts on Mr. Robinson's part as to who exercised jurisdiction. In reality Mr. Robinson and everyone else knew what the effective jurisdiction was, and argument on the subject was pointless.

13. Mr. Robinson suggested the Irish Government should avail of the aphorism "nothing agreed until everything agreed", which they had held out as a great protection. If they could say yes to the proposition that under certain circumstances the status of Northern Ireland could be unambiguously expressed, that would unfreeze the capacity of the unionist parties to put forward their proposals. It would unblock the dam. If the status of Northern Ireland was such an established fact, there should be no block on the Irish Government saying so.

14. Minister O' Malley said that that aphorism was a protection for the unionists also. The discussions were going in a futile direction. Mr. Robinson said that the Irish Government should not minimise the difficulties which this issue posed for unionists. The Tánaiste stressed that great care had been taken to understand the unionists' position. The Irish Government understood it fully. They accepted it was a valid tradition in Northern Ireland and had to be taken cognisance of. They were saying however that the nationalist position had been ignored and that that could not continue.

15. Dr. Paisley said that the document was not talking about allegiance. It was talking specifically about the status of Northern Ireland. The status of Northern Ireland as part of the United Kingdom was not open for negotiation. The text had not spoken of allegiances or philosophies, but of status. Dr. Alderdice pointed out the text actually referred to "one view of the status". Mr. Hume said that unionists accepted the status of Northern Ireland de jure. Nationalists accepted that status de facto, but agreed there could be no change in the status without the consent of a majority. The problem was to accommodate both those views.

16. Mr. McGimpsey said that it was reasonable to continue to raise this issue. Mr. O'Malley had mentioned Article One of the Anglo-Irish agreement but State Counsel in the High Court had indicated that its treatment of the status of Northern Ireland was "virtually meaningless". Taking refuge in Article One of the Agreement was a fudge. It had been "deliberately not defined". He recalled earlier discussion and appealed again to the Irish Government to indicate that an agreement could be reached where they could accept the status of Northern Ireland in an unambiguous way, and then move the discussion on from that.

17. Minister O'Malley recalled earlier discussion in Strand Two in July. He repeated the points made on that occasion: certain things were not spelled out due to the constitutional position in the Republic, and doubt whether or not it was open to the Irish Government to state things as had been suggested. It was a well-known position of the Irish Government that Constitutional inhibitions were matters that would be considered in the context of an overall decision. This issue was not in the decision or gift of the Government or Parliament. It had to be accepted by the people as a whole. Dr. McGimpsey had implied the discussions were putting the cart before the horse but which was the cart and which was the horse?

18. Sir Ninian enquired whether the critical point requiring consensus in paragraph 4 of the Irish paper related to the existence or otherwise of Northern Ireland or to the underlying disagreement. Minister O'Malley said it referred to the exclusion of the nationalist tradition comprising almost half of the population. Dr. Paisley objected to any implication that doubts about the existence of Northern Ireland were shared by the British Government.

19. At this point the meeting adjourned for a coffee break.

Resumed Session

20. When the meeting resumed Mr. McBride (Alliance) asked the Irish Government whether they would agree that the democratic deficit was ^{of} ~~it~~ vital interest across the board in Northern Ireland. Minister O'Malley said the issue was of concern but it was only one aspect of the problem and we did not regard it as the central one. They would welcome this application of "subsidiarity" but the central issue was that the unionist identity had been catered for and the nationalist identity excluded up to now. Dr. Paisley enquired whether the critical point at issue for the Irish Government is whether Northern Ireland should exist at all. Sir Ninian said that the Irish Government had twice clarified that the critical point related to a disagreement flowing from deep divisions. Minister O'Malley said that Northern Ireland did exist, however much some people might wish otherwise. The DUP should not persist in seeking to ascribe the opposite view to the Government.
21. Dr. Paisley said that if the conviction of the Dublin delegation was that Northern Ireland should not exist at all, and was only to be healed by a united Ireland, then there was no solution. He recalled the Anglo-Irish Agreement referred to the "people" of Northern Ireland. He asked whether the Irish delegation accepted this notion of "people", in the singular.
22. Minister O'Malley reiterated his doubts on the value of going over the same ground again. He recalled that Northern Ireland existed. The Irish Government recognised that. The arrangements for its Government were not going to be changed except by the consent of a majority there. That was a clear position. There was no wish to impose change except with the consent of a majority. The Irish Government believed however there were fundamental shortcomings in the situation

which contributed to division and to a sense of alienation, and ultimately to violence. They invited the participants to join with them in tackling this problem, and to create new institutions to address it. That was what was under discussion on this particular agenda item.

23. Mr. Mallon recalled also that this agenda item dealt with structures. The Chairman had exhorted delegations to submit papers. Not many papers had been forthcoming but the meeting should discuss institutions. A report on this was required and delegations should concentrate on it.
24. Mr. Maginnis said he drew some consolation from the explanation given in relation to paragraph 4. It would provide a more durable foundation for new structures if they were able to relate directly to the Oireachtas and to a new Assembly. They should not be left in mid-air, trying to take on a degree of autonomy. That would leave them subject to attack. If they were based on delegated authority from the two Assemblies, they would have much greater authority. He accepted that would require good will from both sides, as Minister Andrews had said the previous day. That was why everyone should hasten slowly.
25. The Tánaiste recalled his intervention the previous day. He said power only flows from where power is. The two Governments would have to transfer power to a specific body with clear operational autonomy. The Assemblies could operate through them. The negotiations as a whole were groping towards something practical.
26. Minister O'Malley recalled the example of the European Community and the manner in which States cooperated in that framework. These methods had a very definite relevance on a smaller scale to North-South cooperation. Both parts of Ireland were losing out from separation. Without being

dogmatic, there should be some body which made decisions as to how economic activity could be encouraged or infrastructure established.

27. Mr. Maginnis thought the European Community example was fraught with danger. He recalled the present difficulties in the Community arising from remoteness, inaccessibility and the bureaucratic aspect of the Community. To overcome distrust between the two political entities would require practical application and a hands-on approach. Minister O' Malley disagreed that the allegations of remoteness, etc., made against the Commission could apply in Ireland. The total population of Ireland was less than the city of London. Both parts of Ireland had a tradition of very immediate representative democracy, more so than in Britain or on the Continent. He did not see much danger that people serving on or with new institutions in Ireland would be remote from the people.
28. Mr. Mallon said that Mr. Maginnis had raised a crucially important point of view. Two sovereign Governments were able to make decisions, those representing Northern Ireland perhaps less so. He believed no one would shed power willingly, especially not politicians and civil servants least of all. Power would not be willingly delegated unless this had been agreed and tied down from the outset. Furthermore politicians would always tend to side with those they represented against perhaps wider general interests. He did not believe the good will referred to by Mr. Maginnis would cover the problems. The Irish Government paper had suggested three excellent principles to govern institutional structures. Minister O' Malley had stressed the European analogy. Under that system, when a decision was taken, Governments were bound to implement it. That was the type of arrangements that the Irish Government had in mind.

29. Mr. Maginnis said the corollary was that the European Commission made decisions which no-one wanted to implement. The new institutions would be without accountability and without the control which was vital to build up good-will and trust. Mr. Morrow expressed doubts about the model and in particular whether an Irish Government would cede power to a body that the opposition had no relations with (?). He did not believe that the kind of structures proposed could "live on their own". They had to derive responsibility from whatever body held power.
30. Mr. Mallon again recalled his concept of new institutions. Mr. Hume said the two sides would operate areas of agreement. If there was disagreement they would not do anything. However, as last week's discussions had underlined, there was a vast area of common interest. In the European system there were even greater divergences but agreement had to be hammered out. If the peoples of Europe were interdependent this was even more true of the island of Ireland.
31. Mr. Fell enquired whether a decision could be taken by the Northern representative, irrespective of the wider UK interest and of exchequer considerations. He recalled that the Sunningdale arrangement had permitted the UK to reserve its position in relation to financial matters. Mr. Mallon thought there would be checks and balances in the system. Mr. Fell enquired whether this meant that a Northern Minister would not agree unless the finance was already there. Mr. Hume said that the institutions would operate on agreed powers and with an agreed budget. Mr. Fell again referred to the Sunningdale model, which had maintained a distinction between joint decisions and joint actions. The European model involved joint decisions but not joint action. He asked if this were a model envisaged here. Mr. Mallon agreed this was the broad thrust of the proposal.

The Irish Government paper had suggested three excellent principles. These should be built on to develop new structures. He added as an afterthought, on Sunningdale, that there was a time when that might have worked but that time had now passed.

32. Dr. Paisley referred to the reference to the security forces in paragraph 5 of the Irish paper. He resented a criticism of the security forces on grounds they were upholding the status quo. As regards symbols, there was a crown and a harp on RUC badges, the harp being identified with Ireland. In fact the crown was the smallest of the two and perhaps it should be bigger. He felt it was ridiculous to say that nationalists had no say in Northern Ireland. They had been elected to all offices and entitled to provide the leader of the opposition in Stormont. 80% of the original Protestant population of the South was no longer there.
33. Mr. Mayhew said he had examined the text carefully in case any slur was implied. He did not interpret it in that light. It was a projection of the Irish argument that the unionist identity was part and parcel of the state of Northern Ireland and the nationalist tradition was not so reflected, and that there was therefore an imbalance or asymmetry. Dr. Paisley retorted that he would expect no other reply from the British Government.
34. Minister O'Malley complained of the difficulty in putting forward papers if every sentence was to be taken out of context. Mr. Hume said that the reference in question was merely a statement of fact. Mr. Haughey recalled that Stormont had been the seat of the Northern Administration since the 30s. He defied anyone to show him any monument or feature on the estate which reflected the nationalist tradition. Dr. Paisley objected that the Garda had symbols of the Irish State on their badges. He saw the "knife" and

the full significance of the paper. If the British Government did not see it then that was a pity. At the conclusion of the session, the Tánaiste, at Mr. Maginnis' request, supplied a reference to the White Paper quoted in paragraph 4 of the Irish document (cmd 5259). The Session then concluded.

Seán O hUiginn
5 October, 1992