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29 Meitheamh, 1994.

SECRET

An Rúnaí Príobháideach  
An Tánaiste agus Aire Gnóthaí Eachtracha

I am to refer to the memorandum dated 29 June, 1994, submitted by the Tánaiste and Minister for Foreign Affairs, concerning work on a Framework Document to relaunch political talks and to inform you that, at a meeting held today, the Government decided that

- (1) the Cabinet Committee on Northern Ireland, in consultation with the Attorney General, should oversee further contact with the British side on the issue of a balanced accommodation of the positions of the two main traditions on constitutional issues, as envisaged in the Programme for a Partnership Government; and
- (2) Inter-departmental Committees of the relevant Departments should be set up at senior level, as a matter of urgency, to enable the Tánaiste to bring specific proposals to Government, as soon as possible, on
  - (a) the precise competences which should be sought for a North/South Body for joint executive, harmonising or consultative treatment on an all-Ireland or cross-border basis; and
  - (b) how the role of the North/South Body could be most effectively and comprehensively linked to the dynamics of European integration and given the strongest practicable role in this respect, with particular reference to the Structural Funds, including the Community Initiatives.

**FRANK MURRAY**

Rúnaí an Rialtais

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An Rúnaí Príobháideach  
Gach Aire/Aire Stáit ag an Roinn Airgeadais (E. Fitzgerald)

Mar eolas don Aire/Aire Stáit

Oifig an Aire Gnothaí Eachtracha

29 June 1994

MEMORANDUM FOR GOVERNMENTWork on a Framework Document to Relaunch Political TalksDecision Sought

1. In order to develop in detail Irish objectives and positions in further dialogue with the British side on agreeing a Framework Document to relaunch political talks, the Tanaiste and Minister for Foreign Affairs proposes that:
  - (i) The cabinet subcommittee comprising the Taoiseach, the Tanaiste and the Minister for Justice, in consultation with the Attorney General, ~~and with the addition of ..... and appropriate officials and advisers,~~ should oversee further contact with the British side on the issue of a balanced accommodation of the positions of the two main traditions on constitutional issues, as envisaged in the Programme for a Partnership Government.
  - (ii) ~~(An)~~ Inter-departmental Committee(s) of the relevant Departments should be set up at senior level as a matter of urgency to enable the Tanaiste and Minister for Foreign Affairs to bring specific proposals to the Government as soon as possible
    - on the precise competences which should be sought for a North/South Body for joint executive, harmonising or consultative treatment on an all-Ireland or cross-border basis
    - on how the role of the North/South Body could be most effectively and comprehensively linked to the dynamics of European integration, and given the strongest practicable role in this respect, with particular reference to the Structural Funds, including the Community Initiatives.

Background

2. The British and Irish Governments agree that the prospects for political dialogue on Northern Ireland would be enhanced if they approached the parties on the basis of a framework for accommodation broadly agreed between the two Governments. Discussions on the outline of such a joint position have been taking place at

political and official level with the British Government since April. This paper is intended to inform the Government of the current state of these discussions.

3. A Liaison Group, comprising officials from both sides has reached agreement, ad referendum on the draft of a joint framework document, with the exception of a number of unresolved and contentious matters which remain between square brackets and important details, such as the precise remit of North/South Body, which remain to be decided in concrete terms.
4. The work of the Liaison Group has been overseen by the Tánaiste and the Secretary of State for Northern Ireland and considered in detail by them most recently at the Anglo-Irish Conference on 16-17 June. It has been reviewed at intervals by the Taoiseach and Prime Minister Major, most recently at their meeting on the margins of the European Council in Corfu. Progress will be further considered at a formal Anglo-Irish Summit scheduled, subject to confirmation, for July.

#### Areas of Agreement

5. The agreed sections of the draft describe in fairly helpful and forthcoming terms from the Irish point of view a "shared understanding" between the Irish and British Government of what might constitute the outcome to resumed Talks. It reaffirms the Declaration's key objective of promoting and establishing agreement among the people of Ireland. It makes clear that a resumed Talks process would aim at an outcome consistent with the Declaration and also with the statement of 26 March 1991 (the agreed basis for the last round of Talks).

#### Principles

6. In the introductory section, both Governments endorse a number of principles to guide them in their search for agreement, including self-determination (as in the Declaration), non-violence and parity of esteem between the two traditions in Northern Ireland.

#### Possible Internal Structures

7. Broad criteria have been agreed for internal devolutionary structures in Northern Ireland (the detail of which would be a matter for negotiation among the political parties who would operate them). The draft underlines the need for agreed power-sharing arrangements and envisages a reciprocal nationalist/Unionist veto on major issues (e.g. human rights, key appointments etc.) One model for agreement might be that comprising a 85-member Assembly, executive committees (whose chairpersons might function as Head of Department), and an overseeing or Presidential-style three-person "Panel",

also elected directly, as discussed in Strand One of the 1991-2 talks. An alternative possibility for selecting Heads of Department might be for these to be appointed by the Panel from the Assembly.

8. The draft also endorses the need for parity of esteem and treatment and for equality of opportunity and advantage between the two communities in Northern Ireland.

#### North South Bodies

9. There is agreement in principle on the need for a North/South body to discharge or oversee a mixture of executive, harmonizing and consultative functions on an all-island or cross-border basis. Detailed decisions remain to be taken on the policy areas which would be selected for such treatment and on the nature of the functions to be exercised in each instance. The British side is reasonably forthcoming in principle, but this remains to be tested in specific detail, and will later be subject to Unionist cooperation.
10. The Body would bring together Irish Ministers on the one hand and Northern Ireland political "Heads of Department" on the other. It would be mandated by legislation in Dail Eireann and Westminster.

In addition to furthering practical cooperation, it would have the explicitly political purpose of helping to heal divisions and to promote agreement among the people of Ireland. The body would deal with a range of matters which the two Governments would designate for treatment on an all-Ireland basis (or which the two administrations, North and South, would subsequently agree should be so treated). Its role could develop to keep pace with growing integration between the two economies, North and South.

11. The Body would take decisions by consensus between the two sides. There would be provision for regular scrutiny of the Body's activities by Dail Eireann and the prospective Assembly in Northern Ireland. A North/South Parliamentary Forum is also envisaged.

#### East West Structures

12. There is also agreement, in the East-West section of the draft, on the continuation of an Intergovernmental Conference, chaired by the designated Irish Minister and by the Secretary of State for Northern Ireland. As provided in the Anglo-Irish Agreement, devolved matters would be removed from the agenda of the Conference. There could also be modifications to make this mechanism more acceptable to Unionists, including probably some involvement of representatives of the new Northern Ireland internal institutions (in a form and to an extent yet to be decided by the two Governments in consultation



with the parties).

13. It is agreed the Conference, which would continue to be supported by a permanent Secretariat, would provide a continuing institutional expression for the Irish Government's legitimate concern and role in relation to Northern Ireland.

#### Bill/Covenant of Rights

14. There is also agreement in principle that these institutional arrangements would be complemented by a Bill of Rights, which the Irish Government would wish to see entrenched through the new Agreement. It is also agreed that there might additionally be a Charter or Covenant of rights, adopted on behalf of all the people of Ireland to renounce violence and confirm mutual respect and basic rights, including for unionists in any future all-Ireland framework.

#### Areas where agreement has yet to be reached

15. Key areas of difficulty remain:
  - Constitutional issues;
  - Treatment of the North/South body's European Union dimension;
  - Guarantor role of the new Conference or of both Governments;
  - There is also some uncertainty on the way in which the principle of real equality between the two communities should be reflected in the parameters for internal structures, but this can probably be resolved;
  - The precise competences of the North-South Body, which will determine the significance or otherwise of the new structure, also remain to be discussed and agreed in concrete detail between the two Governments, who will subsequently face the further challenge of securing unionist agreement for them.

#### Constitutional Issues

16. The basic British strategy appears to be to offer the Unionists constitutional reassurance in terms of enhanced Irish recognition of the status of Northern Ireland. They hope this would in turn make it easier for Unionists to operate power-sharing and North/South institutions. They assume that Dr. Paisley is effectively a lost cause, and hope that Mr. Molyneaux and his party can be brought to confront him. They consider that change in Articles 2 and 3 of the Irish constitution would have high symbolic

value in this enterprise. They accept that there must be some balance of constitutional change on both sides, but see the new structures rather than constitutional change as the main "selling-point" for nationalists. They have made their commitment to institutional change subject to constitutional change on our side.

17. The British appear to have four basic objectives under the constitutional heading:
  - An amendment of Art. 2 of the Irish Constitution so as to express an aspiration or a right to pursue the goal of a united Ireland, which would embrace the national territory as defined;
  - Removal of the claim of right to exercise jurisdiction over the whole island, as expressed in Art. 3;
  - Recognition by the Irish Government of the legitimacy of British jurisdiction over Northern Ireland as long as a majority there opt for the Union;
  - Removal of modification of the "Constitutional imperative" (though they appear to accept that this would be achieved in any case by the amendment of Articles 2 and 3).
18. The British have so far rejected as insufficient in terms of allaying Unionist concerns the Government's offer to enshrine the consent principle in the Irish Constitution (to which the Government has committed itself under the Joint Declaration).
19. The Taoiseach and Tanaiste in turn, have argued the need for a carefully balanced constitutional accommodation and have pointed out that this will require constitutional movement in both jurisdictions. They have made clear that any changes in relation to the Irish Constitution will have to be balanced by corresponding significant change in the British constitutional provisions dealing with Northern Ireland. They have emphasised the potentially far-reaching consequences of having the consent principle enshrined in the Constitution, as opposed to being merely compatible with it. They have also explained that institutional proposals on their own cannot balance change to the Irish Constitution, since a referendum might well hinge on constitutional issues in the abstract, and in any case institutions might fail to materialise, or collapse. They have highlighted also the need for sensitivity to the position of Northern nationalists, if a referendum in our jurisdiction is to succeed.
20. The decisions the Government will face are:

- (a) What degree of change, if any, to propose for the Irish constitution
- (b) What balancing change is necessary in constitutional doctrine on the British side
- (c) What new institutional arrangements are desirable or necessary across the three strands.

21. The broad approach suggested is as follows:

- (i) Article Two, as the definition of the national territory, is left intact
- (ii) Article Three is amended to delete the claim of right to exercise jurisdiction over Northern Ireland, to affirm that the reintegration of the national territory is a legitimate primary national objective which will be pursued only by peaceful means and achieved with the free consent of a majority of the people in each jurisdiction. The saving clause on the extent of application of the laws of the State would remain as before.
- (iii) It is suggested that Article 75 of the Government of Ireland Act, which is the fundamental assertion of sovereignty over Northern Ireland in British law, should be modified to make that sovereignty a function only of the wishes of a majority of the people in Northern Ireland, and incorporating the principle of self-determination, by adding key language from paragraph four of the Joint Declaration as a rider to the existing Article 75.
- (iv) As regards institutions, the Government would seek to ensure parity of esteem and treatment, and the fullest possible equality for Northern nationalists that can be achieved consistent with no change in the present status of Northern Ireland. The aim would be to offer both identities "equally satisfactory, secure and durable, political, administrative and symbolic expression and protection" as envisaged in the report of the New Ireland Forum.
- (v) The remit of new North/South Institutions should embrace the agenda envisaged in the Sunningdale Agreement, which included suitable aspects in the broad fields listed below, updated and adapted. (A particular goal might be to have as many of the promotional agencies as possible, such as tourism, export promotions, etc., put on an all-Ireland basis):

- (a) Exploitation, conservation and development of

*Pro Active  
Approach  
Advocated*



natural resources and the environment

- (b) Agricultural matters (including agricultural research, animal health and operational aspects of the Common Agricultural Policy), forestry and fisheries
- (c) Cooperative ventures in the fields of trade and industry
- (d) Energy Networks
- (e) Tourism
- (f) Roads and transport (including railways and canals)
- (g) Advisory services in the field of public health
- (h) Science, sport, culture and the arts.

*Present in 2)  
joint from Ireland  
in an all Ireland  
basis*

*Also  
Excluded in  
S.W. - but 2)  
Co-operation  
(Ireland),  
Health  
Strategy)*

*Broadcasting, Audio visual & film*

*Excluded in  
in an  
all Ireland  
basis.*

EU Aspects

The development of the European Union is now, however, a much more influential factor for integration than it was in the Sunningdale period. This should be reflected in the strongest attainable link between the North/South Body and the dynamics of European integration. The British side are highly reticent on this issue, reflecting the current political sensitivity of EU issues for them, and the technical and legal difficulties involved in any significant departure from the existing frameworks and provisions, which are nationally-based in terms of the Treaties and negotiating practice.

Guarantees

- 23. The difference on guarantees reflects a wish on the Irish side for 'up-front' guarantees involving both Governments, as a practical and symbolic reassurance for Northern nationalists that there is no question of their reverting to the isolation they suffered under Stormont. The British consider that Unionists would oppose such a joint guarantee as an unacceptable increment in the role of the Irish Government and an implicit form of joint sovereignty. It may be that the issue can be resolved by specifying the precise scope of any guarantee to make clear there is no derogation of sovereignty.

Security and Policing

- 24. The work of the Liaison Group has not dealt with the very complex and sensitive issues of security and policing, beyond a general acknowledgement that the growth of political agreement could offer new possibilities for enhancing community identification with policing in

Northern Ireland. This would be an issue of major importance for Northern nationalists in any future talks. It would be for consideration now whether the issues of policing and prisons should be brought more into the discussions on the Framework Document.

#### Further Work

25. In order to develop in detail Irish objectives and positions in further dialogue with the British side, it is proposed that:
- (i) The cabinet subcommittee comprising the Taoiseach, the Tanaiste and the Minister for Justice, in consultation with the Attorney General, and with the addition of . . . . and appropriate officials and advisers, should oversee further contact with the British side on the issue of a balanced accommodation of the positions of the two main traditions on constitutional issues, as envisaged in the Programme for a Partnership Government.
  - (ii) Inter-departmental Committees of the relevant Departments should be set up at senior level as a matter of urgency to enable the Tanaiste and Minister for Foreign Affairs to bring specific proposals to the Government as soon as possible
    - on the precise competences which should be sought for a North/South Body for joint executive, harmonising or consultative treatment on an all-Ireland or cross-border basis
    - on how the role of the North/South Body could be most effectively and comprehensively linked to the dynamics of European integration, and given the strongest practicable role in this respect, with particular reference to the Structural Funds, including the Community Initiatives.

#### Consultation

26. Because of the highly sensitive nature of the content of this Memorandum, the usual prior consultation was not carried out other than in the case of the Taoiseach.

Department of Foreign Affairs

June, 1994