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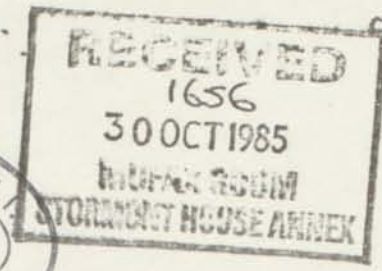
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PS/Secretary of State

C.C. PS/Mr. Scott 31/8



PS/PUS
PS/Mr. Bloomfield - M-4
Mr. Brennan
Mr. Stephens - M-6
Mr. Bell
Mr. Ehrman

ANGLO-IRISH RELATIONS - BRIEF FOR CABINET ON THURSDAY 31 OCTOBER

The Joint Memorandum

1. The Memorandum was agreed last night by you and the Foreign Secretary. It represents the Agreement as offering closer relations with the Republic, providing reassurance for Unionists through formal acceptance of the status of Northern Ireland and a commitment to cross-border security, and aiming to bring the minority to ready acceptance of the institutions of government by giving the Irish a formal though non-executive role in respect of Northern Ireland affairs.
2. In speaking to the Memorandum the Secretary of State may wish to emphasise his personal responsibility for operating the Agreement and seeking to use it to promote peace and stability in Northern Ireland. He may wish to advise his colleagues that, from that standpoint, the balance of advantage does lie in proceeding with an Agreement but that it is a relatively fine one.
3. The remainder of this brief touches on the more important issues raised in the Memorandum and follows the layout of the Memorandum.

Legal Matters (paras 5 and 6)

4. Article 8 of the Agreement commits us to consideration of mixed courts. But paragraph 5 of the Memorandum makes clear that British Ministers will wish to put a public gloss on that reference and indicate how problematic progress on mixed courts will be. The Memorandum indicates that there will be an oral report at Cabinet on the official talks in Dublin at which this question has been discussed. If it transpires that the Irish have maintained their insistence that the reference to mixed courts appears in the Agreement - despite the knowledge that we will publicly make clear the improbability of early progress - the Secretary of State will wish to indicate that though he accepts the reference he does so reluctantly since he expects it to be a particularly contentious element in the Agreement for Unionists (it will also be unpopular

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with the Lord Chancellor and Northern Ireland judges). However, he recognises that to press for its withdrawal at this late stage would risk wrecking the whole Agreement. The more desirable - but less likely - outcome of the Dublin talks would be that the Irish, when faced with our intention to put a public gloss on the reference to mixed courts, had agreed to reconsider whether in those circumstances it was worth referring to mixed courts in the Agreement at all.

5. The Secretary of State is aware of the linkage the Irish have sought to make between mixed courts and their accession to the European Convention on Suppression of Terrorism. Also under discussion in Dublin has been their desire to qualify their intention to accede by demanding prior progress in improving minority confidence in the administration of justice. The Secretary of State will wish to inquire whether the Dublin talks succeeded in removing that qualification and so allowing paragraph 7 of the draft Communiqué to be redrafted so that accession to the Convention would not be linked to a "background" of progress on other fronts.

Implementation (paragraph 7)

6. The Secretary of State could remind Cabinet that the Irish pressed us for substantial changes regarding the UDR and RUC which were resisted. As for the minor changes agreed we are content on operational grounds as are the MOD. In particular, the increase in the practice of the RUC to accompany the UDR has much merit in its own right.

7. For their part the Irish have begun to redeploy task forces of the Garda in the border areas which is welcome so far as it goes. Colleagues may wish to know, however, that the Secretary of State considers that a substantially greater and longer lasting commitment from the Irish is still necessary and that he intends to use the Intergovernmental Conference to press the Irish very hard on this point. This is an area where the Agreement should be of direct practical value to us.

Secretariat (paragraph 8)

8. In view of the controversy that will inevitably attach to a Secretariat based in Belfast it may be worth emphasising the importance of convincing the Irish not to give an unduly high profile to the Secretariat. Apart from carrying out normal secretarial duties it should be essentially a channel of communication. Certainly we must be on our guard against any attempts to give it a quasi executive role. Paragraph 8 makes the point that we should seek to have the first meeting in London rather than in Belfast and that the size of the Secretariat should be limited (both in numbers and grade).

Likely Reactions in Ireland (paras 10 - 13)

9. The Secretary of State will wish to make clear the strength of the opposition of both unionist parties. There may be some in business and commerce who recognise the value of a deeper relationship with the Republic; and many moderate unionists may find little to object to in the Agreement. But it would be a delusion to think that anybody other than the politicians will make the running in the aftermath of a summit. In particular they feel genuine indignation that they have not been consulted (as the Irish have consulted the SDLP) and that we insist on an acceptability test for any new arrangements for devolved government but not for the present Agreement. We can expect to face continued threats of referendums, resignation of seats at Westminster, in Europe and on District Councils, and withdrawal of co-operation. To some extent such talk is posturing; but there is a real feeling against any institutionalised role for the Irish.

10. Paragraph 11 of the Memorandum makes the point that although the present security assessment is reasonably sanguine there is always a risk of sudden change. The loyalist paramilitaries are being cautious and the likelihood is that the Agreement - given its essentially limited nature - will fall short of their worst fears and will not provoke them to sustained industrial disruption or violence. Nevertheless much will depend on both our presentation and our operation of the actual Agreement in the early months. The touch paper could be lit by perceptions of an executive role for the Irish, by ill-judged remarks from the SDLP or Dublin, or by some untoward or mishandled security incident. The Secretary of State will not wish to give the impression that the way ahead is trouble-free.

11. It is therefore encouraging that the SDLP is taking a low key approach. They seem to be ready to take their cue from Dublin and represent the Agreement as a modest and a useful step forward from which unionists have little to fear. No-one, so far, is claiming the Agreement is a step to Irish unity.

International Reaction (para. 14)

12. The Memorandum emphasises that American money for an International Fund will only be forthcoming if it is treated as additional. The Chief Secretary has accepted that "strict non-additionality rules" should not apply to the Fund. However he has reserved his position by saying also that the implications of a Fund cannot "simply be ignored" in the future. This reservation effectively drains the earlier acceptance of real significance, since we have to be able to state clearly to the United States that additionality is assured once and for all. The Secretary of State may wish to make this point to colleagues.

Legal Challenge (para. 15)

13. Although the Memorandum makes no reference to it, the Secretary of State has inquired as to the extent to which we are bound by the Agreement to consult the Irish Government on the matters specified in it. Our legal advice is that if we fail in any part of our obligations under the Agreement then it would be normal international practice for the Irish to complain - which could include asking for a review of the working of the Inter-governmental Conference under Article 11. Ultimately it would be open to the Irish, after giving due notice, to denounce the Agreement. In addition to the international obloquy that the United Kingdom would be likely to incur, we would also lose the advantage secured by Article 1. However, there is no formal international court to exercise jurisdiction over the Agreement.

Conclusions (para. 16)

14. Paragraph 16 of the Memorandum is rather more clear cut in its presentation of the advantages of the Agreement than was the earlier NIO draft. In giving his own assessment, the Secretary of State may wish to indicate that he finds the balance of advantage to be a fine one. The Agreement does have a downside. It may not deliver enough to nationalists to satisfy them (much will depend on the visible results that emerge and we will be under some pressure to show results, particularly in the early days); it may nevertheless contain enough to offend many unionists deeply; and by institutionalising the Irish Government's role as spokesman for and protector of the minority, it risks reinforcing division rather than encouraging reconciliation.

15. But for all that, the Secretary of State will want to come down on the side of proceeding with the Agreement. A closer relationship with the Republic is essential if they are to work with us in resolving the political and security problems of Northern Ireland. Moreover, the new framework allows the SDLP to end their refusal to consider any internal political development (in the short-term such development may well be blocked by unionist refusal to contemplate any form of power sharing; but in the longer-term it may prove possible to get some inter party dialogue going). To the extent that the new arrangements reconcile the minority to the institutions of government everybody in Northern Ireland - and the UK - will benefit. And there will be clear international benefits. Furthermore - and this is an especially weighty consideration - not to proceed with the Agreement would deprive us of any credible policy in Northern Ireland. Direct rule on its own is not enough. As successive Secretaries of State have found, it results in political stagnation, inter-communal polarisation, and the discouragement of constructive constitutional politics (witness the emergence of Sinn Fein). Consequently it is impossible to bring the two communities to work positively together to tackle the range of political, security and economic problems in Northern Ireland. To abandon an agreement now would not only return us to the dangerously negative situation from which we sought to escape when we opened

negotiations with the Irish. Because we would have to admit public failure and would attract much approbrium from Dublin, the Northern minority and overseas, we would be even worse off than before. Instead of undermining support for Sinn Fein and PIRA we would risk increasing it.

AC

D. CHESTERTON
30 October 1985