

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

UNDER/ 212/3  
REC  
1 MAR 1991  
CENT SEC

FROM: STEPHEN POPE  
11 MARCH 1991

SP/13540/91/JEC

- cc PS/PMG (B&L) - B
- PS/Min of State (B&L) - B
- PS/PUS (B&L) - B
- PS/Sir K Bloomfield - B
- Mr Ledlie - B
- Mr Pilling - B
- Mr Alston - B
- Mr A P Wilson - B
- Mr Spence
- Mr Hamilton - B
- Mr Thomas - B
- Mr Wood (B&L) - B
- Mr Dodds
- Mr Cooke - B
- Mr Bell - B
- Mr Petch - B
- Mr D J R Hill - B
- Mr D A Hill - B
- Mr McNeill - B
- Ms Lodge - B
- Mr McKervill - B
- Mr Archer, RID - B
- HMA, Dublin
- Mr Appleyard, Cab Office
- Mr Kennedy, Cab Office
- Mr Gowan, Cab Office
- Mr Cowper-Coles, Washington
- Chief Constable, RUC HQ

ARST./ kw 183/3.  
REC  
11 MAR 1991  
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PS/Secretary of State (B&L) - B

INTERNAL PLENARY RECORD OF THE INTERGOVERNMENTAL CONFERENCE HELD IN DUBLIN ON 31 JANUARY 1991 - IC(91)1

I attach a final version of the Internal Plenary record of the Intergovernmental Conference held in Dublin on 31 January 1991.

(Signed)

STEPHEN POPE  
11 March 1991

*Handwritten signature: MR Nilsen 14/3*

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

INTERNAL PLENARY RECORD OF THE  
INTERGOVERNMENTAL CONFERENCE  
HELD IN DUBLIN ON 31 JANUARY 1991

Present:British Side

Mr Brooke  
Lord Belstead  
Mr Needham\*  
Chief Constable  
PUS  
Sir K Bloomfield  
HMA  
Mr Pilling  
Mr Ledlie  
Mr Thomas

Secretariat

Mr Alston  
Mr Pope  
Mr Hallett

In Attendance

Mr Murray\*  
Mr Archer  
Mr Cooke  
Mr Pawson

Irish Side:

Mr Collins  
Mr Burke  
Mr Flynn\*  
Garda Commissioner  
Mr Dorr  
Mr Mathews  
Mr Gallagher  
Miss Anderson  
Mr Murphy

Secretariat

Mr O'Donovan  
Mr Crowley  
Mr Nason

\* For part of the discussion only

The meeting began at 1540 with a Ministerial tête-à-tête attended by Mr Brooke, Lord Belstead, Mr Collins and Mr Burke. This was followed by the restricted security session. The plenary session began at 1800.

POLITICAL DEVELOPMENT

2. Mr Collins said that the meeting of officials on 10 January had been extremely useful. The Irish were grateful for the new British paper and also for the detailed presentation of the thinking behind particular phrases. At the further meeting of officials earlier that week, the Irish had sought to respond in the same level of detail and to point out which specific phrases were difficult for

them. He did not propose to go over the same ground today and would confine himself to two or three main problem areas which the Irish saw in the British paper and to comment on these. Mr Collins said that before addressing textual points it was only fair to underline that the Irish reaction was inevitably influenced by public statements from the Unionist leadership, since they did not have the opportunity to discuss the text directly with the Unionist leaders. He appreciated that what the Unionist leaders said might to some extent be designed for public consumption and not represent their real position.

3. Even allowing for this, however, the Irish were not reassured by what they had heard. They had read the transcript of remarks by Dr Paisley in early January and more recently by Mr John Taylor, who seemingly was speaking on behalf of the UUP when Mr Molyneaux was in Australia. Looking at these comments, he saw repeated references to "substantial progress". In addition, the concept of agreement being reached first in the internal talks surfaced again and again, with the North/South strand only following thereafter. As to Mr Brooke's role in deciding on the transition to the North/South phase, Dr Paisley had repeatedly referred to "consensus" being required and Mr John Taylor had said: "I would never agree to handing over to someone outside my party the right to decide when my party talks to anyone".

4. Mr Collins said that it might be that the Unionist position in private was substantially different from their public presentation but it seemed to the Irish that they were keeping their options open. The political reality was that, by publicly giving a very restrictive interpretation of what the text meant, they were putting in place a basis on which they could refuse to move to the North/South strand.

5. Mr Collins said that the Irish had repeatedly emphasised the same philosophical points at a number of meetings over a considerable period of time. They did this to ensure that the British fully understood their position. He did not propose to go over well worn ground again but wished to underline once more the twin concerns which the Irish had had from the outset. The first

was that, in a process designed to transcend the agreement, there could not be a question mark over the participation of one of the co-signators. He thought that John Hume had put his point well to both the Irish and the British recently when he said that he saw in the new paper "a down-grading of Dublin's role" with the Irish Government being brought in "by the back door". His basic point was that, if the process was about a new agreement, the two governments must be in charge of organising and structuring the process. Second, the reality was that if the internal talks were set an unachievable objective, the whole process was doomed to failure. There were three inter-dependent relationships to be addressed and no one strand should be accorded primacy either through the structures established for the talks or otherwise. It was imperative that the overall structures and timing were got right from the beginning.

6. Mr Collins said that he found the British paper helpful. It was carefully constructed and represented a serious effort to strike a balance between the conflicting requirements. But, having said that, there remained two or three main problem areas. He would deal with these in the order they appeared in the text, which was not necessarily the order of importance. These were in paragraphs 2, 7 and 9.

7. In paragraph 2 there was a reference to "a new and more broadly based agreement or structure to replace the Anglo-Irish Agreement". This could not be acceptable to the SDLP and the Irish Government. There seemed to be a suggestion that the Taoiseach had used the word "replace" in some context, but this was certainly not in any considered statement. The use of "replace" would signal an unacceptable diminution in the status of the present Agreement. It would be necessary to find alternative language here.

8. With regard to paragraph 7, the Irish had had a difficulty for many months over how the Unionist parties were to be described in North/South talks. They continued to have a difficulty with what was proposed here. If the Unionists got their way on this, the North/South talks risked ending up as some variant of the East/West talks rather than having a distinct identity in their own right.

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The two governments were trying to bring about a solution to a most complex legacy of history and neither of them were prepared to "tinker about" with partial arrangements which might suit the Unionist agenda. The Unionists should realise this. British officials had explained that the UK delegation issue was a theological point for Unionists. Mr Collins said that he understood them to argue that there would be an imbalance of status if the party leaders were to engage in dialogue with a sovereign government. In his view this was an artificial point. If the SDLP and the Alliance parties had no difficulty why should the Unionists? Mr Collins threw out the suggestion that perhaps the SDLP should be part of the Irish delegation. (This failed to elicit the British horror which he seemed to expect).

9. The second Unionist point seemed to be that the status of Northern Ireland must be unambiguously established within the UK if they were to talk to Dublin. This again seemed somewhat artificial. It has been repeatedly made clear that for the Unionists to talk to Dublin carried no implication one way or the other for the constitutional status of Northern Ireland.

10. Finally, with regard to paragraph 9, Mr Collins said that this was the most crucial paragraph in the entire text. In the first half of the paragraph the concept of dividing the internal talks into two parts was introduced, initially around bilaterals and then moving to plenary sessions at an appropriate point. He knew this idea had been aired before, but not in such concrete form. He also had the impression that previously the idea was to have most of the bilaterals completed before the gap had begun. The Irish had always held the view that the gap in total should be no more than 10 weeks and their view remained that this should be the outside limit. There was a risk that the bilaterals might drag on over weeks rather than days thus leaving only a limited time for plenary sessions before the agreed time to move to the North/South strand. The Irish were however, somewhat reassured by what they had been told by officials on this point.

11. The final sentence of paragraph 9 was the key one. Mr Collins said that the Irish were extremely worried by the phrase "in

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consultation with the parties". He understood that Mr Brooke would not necessarily be bound by the views of the parties. However, Paisley in his public comments had certainly interpreted this as requiring consensus, which would mean in effect that the Unionists had a veto over Irish involvement in the process and that was certainly unacceptable. At the very least, there was a dangerous ambiguity which had to be removed. His final point concerned the phrase "in the the light of the progress already made". Once again British officials had carefully explained that this was not intended to imply "substantial progress" or "heads of agreement" or anything of that nature. But he was concerned about the ambiguity of this phrase and the gloss Unionists had put on it in their public statements. He thought that Mr Brooke agreed with him

12. Mr Collins hoped that, having outlined where the main problems lay with the text, it would be possible to relay these back to the Unionist leadership to see whether the difficulties could be overcome. After Mr Brooke had spoken to the Unionists, he and Mr Collins might be in touch as to how best to take the matter forward.

13. Mr Collins then raised the venue for North/South talks. He understood this question had only been touched on tentatively in discussions so far with the Unionist leaders. The Irish would regard the Unionist approach on this matter as an important indicator of the seriousness of their commitment to North/South talks. It seemed to the Irish natural that the North/South talks should take place on the island of Ireland, whether in Dublin or some other location which had meaning for both traditions. It was important that the whole venue question was addressed in parallel with discussion of the text.

14. Mr Brooke thanked Mr Collins for his clear and concise explanation. He understood that the Irish needed to read the Unionist mind. After a preliminary word, he would concentrate on the specific problems raised. He said he would like to pay tribute to the Irish patience over the months as the gap between all sides had been progressively narrowed. He accepted that a fissure remained to be overcome. He had been encouraged by the fact that

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time had brought the two sides closer together. This marked recognition on all sides that concessions needed to be made to demonstrate goodwill. That had happened and the gap had been narrowed but it was still deep and needed a strong bridge. He recognised the validity of the Irish position just as the Irish Government and the SDLP had recognised Unionist concerns. No progress was possible unless each side recognised the positions of the others and was willing to make concessions. He understood the Irish need to raise their concerns. In order to lead their parties, party leaders needed confidence that their members would follow them. In order to produce something which would stand up, it was necessary for all sides to be able to deliver their followers. Mr Hume had said that he needed to protect the SDLP flank from Sinn Fein. This was something which could be put to the Unionists and which they would understand. They, in turn, had separate concerns of their own.

15. Turning to the specific Irish problems, Mr Brooke said with regard to the use of "replace", that "transcend" had acquired a value-laden quality which "replace" did not have. It should be possible to find another word which met Irish concerns and also was not too value laden for Unionists. He would see another word could be found. He had thought of "supercede" but recognised that this might be too neutral.

16. With regard to the "UK team", Mr Brooke understood the formal Irish misgiving and why the SDLP were uneasy about it. In conceptual terms however, it was difficult to accept that it was a real difficulty. It was a long standing Unionist position dating from their 1985 correspondence with Mrs Thatcher. It had consistency and longevity. Any fears that the Unionists would hide behind him were illusory. In practice, he said, they would play an active, independent and voluble role which is what the Irish wanted. "UK team" was not the same as "HMG team". While we could seek a different phrase (such as "a team led by the Secretary of State") it would be necessary to find something which conveyed the sense of the Unionist position.

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17. Mr Brooke said that he did not regard the Unionist position on bilaterals as too unhelpful. All had agreed that "housekeeping" could take place before the gap, but all were reluctant to show their hands in advance. The purpose of the bilaterals was to enable him to see if there was a genuine chance of reaching agreement. That should meet the Irish fear that the talks might break down. It was his responsibility to see whether a deal was possible. There could be rapid progress, but it could be the case that he would conclude that the parties were not ready to reach an agreement. No-one, except the Alliance Party, was prepared to indicate their requirements before the gap commenced. If the bilaterals showed a basis for a deal, it would be possible to move quickly to plenary sessions.

18. On Mr Taylor's remarks, Mr Brooke said that he thought this meant no more than that the Unionists wanted the courtesy of being able to see what they were being asked to sign up to. As for Dr Paisley, he had publicly recognised that his objective of superceding the agreement was not achievable without talking to the Irish Government and privately had accepted that this could happen sooner than 5 weeks into the gap.

19. On the key issue, namely the timing of North/South talks Mr Brooke said that this was a matter of trust: since the trust did not exist, the words in the draft were necessary. The point was being reached where a decision was needed on whether it was possible to go forward. The process entailed risks for all, but the British Government carried the greatest risk if the initiative failed. The process of working at the wording could not go on much further. There was another consideration. The current initiative was one of the factors which had put pressure on the IRA to consider their position. If the process failed, that pressure on them would be removed.

20. As to what should be done next, Mr Brooke said he was ready to take the Irish points to the Unionists but felt that he would be skating on slightly thin ice in doing so. The next round of talks might provoke a vigorous Unionist reaction (the Irish showed no signs of understanding this point). There was, however,

considerable will in both parts of the community that the process should go forward.

21. Mr Collins responded that it was up to the Irish to see what could be done to help with Unionist concerns. He promised a further Irish paper, designed to be helpful, "within days rather than weeks".

22. Mr Brooke said it would be necessary to communicate to the press the reasons why it was thought that progress was being made.

Mr Collins said that they might use Mr Brooke's phrase that the gap had been narrowed.

#### CULLYHANNA SHOOTING

23. Mr Collins said that he had asked for this item to be placed high on the agenda of confidence issues in order to reflect the very serious sense of disquiet about the shooting of the Caraher brothers. This incident had caused deepest concern among a wide range of people including the local MP, Seamus Mallon, Archbishop Daly, the Methodist Church Council on Social Welfare and the Nationalist population generally in the North. From the beginning, the Army's version of the shooting had been contradicted strongly by local eye-witnesses. According to the statement issued by the RUC on behalf of the Army, the Caraher brothers were shot after their car failed to stop at a checkpoint and had injured two soldiers. The local eye witnesses were adamant, however, that no soldier had been injured and that version was given credence by the Irish understanding that the soldiers involved were returned to duty in the locality within a matter of days. In the Irish view, in cases such as this, it should be axiomatic that the security force personnel involved should automatically be taken off duty and suspended. An automatic system would clearly not carry with it any prejudice as to the guilt or innocence of the persons involved but would take account of the obvious sensitivities. There was the precedent in the case of the MacAnespie shooting. There was a clear need for an independent element in the investigation of cases such as this in order to ensure that there was full confidence in the process. It had to be accepted that there was, to put it mildly, a problem regarding Nationalist confidence in one branch of the

Northern Ireland security forces investigating the other. It was essential that the investigation should be completed at the earliest possible date. It should not be allowed to drag on for years, as happened in the Stalker/Sampson case. It was surely proper that investigations into incidents of such gravity were carried out with all speed so as to avoid further erosion of public confidence. The Irish were very concerned about the impact of incidents such as this. It was the sixth such shooting in the past year and it now seemed to be time for a thorough examination of the whole area of the lethal use of force by the security forces, including the investigative process and the adequacy of the existing law to meet the needs of the situation.

24. Mr Brooke said that he had spoken to the local MP and was conscious of the reports of eye-witness statements. It was important that they testified to the RUC. In the past their reluctance to do so had made investigation difficult. With regard to returning to duty the security force personnel involved, he was making enquiries about precedent and practice elsewhere in the UK both with regard to the Army and the police. Naturally in the rest of the UK, the cases were fewer and the circumstances less difficult. He heard Mr Collins' comment about no implication of guilt being involved but that would not be easily accepted in the armed forces. He would need convincing. This was a matter for the MOD in the first instance, but he would be speaking to Mr King about it.

25. Mr Brooke said that both Mr Mallon and Archbishop Daly had raised the question of an independent enquiry. Lord Belstead had discussed the matter with Archbishop Daly. He himself had told Mr Mallon that an independent enquiry would represent a lack of confidence in the RUC and would run the risk of setting a precedent for all future incidents. He agreed that the enquiry should be as expeditious as possible and recognised the disadvantages of delay. He also recognised that cases such as this strained relations between the security forces and the community. He would be happy to receive any further ideas from the Irish on the confidence implications of the incident.

26. Mr Collins said that there were strong concerns within the Nationalist community about RUC issuing the Army statement. Mr Brooke said that they had merely reported what had been said to them. Mr Collins replied that the fact that the statement was contradicted by eye witnesses reflected badly on the RUC. The Nationalist community was doing its best to build up confidence in the RUC. He recognised the efforts made by the RUC to improve confidence. He still saw the need, however, for an independent investigation. This need be no reflection on the RUC. He stressed again the need for rapid progress. Experience showed that such investigations tended to be protracted, though he excluded the Stevens Report, which had been carried out effectively and efficiently and reflected well on the Chief Constable. The British Army had been responsible for ten deaths in 1990 of which 6 were controversial, including the Whiterock shootings. The DPP decision in that case had helped to undermine confidence, particularly in view of the perception that it had been made on the recommendation of the RUC.

27. Mr Brooke said that in the case of the Whiterock Shooting, investigation had been handicapped by the reluctance of witnesses to testify. He invited the Chief Constable to speak about the investigation into the Cullyhana Shooting.

28. The Chief Constable said that the RUC had been very cautious in making its statement after the shooting. It was essential to say something after the incident but they had been very specific in making clear that they were merely reporting what the Army had said to them. It was not correct to say that the Army's statement had been refuted, it was merely that some eye witnesses had challenged it. It had not yet been shown to be false.

29. Mr Collins said that the Caraher family had called for co-operation with the RUC enquiry. The Chief Constable replied that, while this was so, the family were telling people to pass their statements through one particular solicitor. It was important that the investigating officer could question witnesses directly. He had appointed a senior investigating officer, Chief Inspector Jackson, in whom he had every confidence. The investigation was

going well so far. The RUC investigator was getting the facts, though not as quickly as he would like. There should be no doubt that it would be a thorough and honest investigation. On the question of calling in someone from another force, the Chief Constable noted that there was not a large number of top quality investigators available from elsewhere. If the RUC had been involved in the incident, he would have considered making such an approach.

#### STEVENS ENQUIRY

30. Mr Collins thanked the Chief Constable for the detailed report given at the last Conference. The Irish side had since submitted some supplementary questions through the Secretariat. The main issues on which they sought clarification related to the implementation of the Stevens recommendations on (a) the upgrading of the system of recruiting and vetting members of the UDR and (b) the security of classified documents and information systems.

31. The Chief Constable outlined the response to the points which the Irish had put forward. On recommendation 52, relating to the inclusion of an RUC representative on the Applications Committee for the UDR, it was considered that this was not necessary. The military must be able to select their own recruits. This was however, linked to recommendation 55 for an appeal process to be established between the two forces to deal with any disagreements. This was now established. He had discussed the matter with the GOC. Any disagreement would be referred both to the GOC and himself, but the GOC would have the last word. On recommendation 57, on comparability of recruitment standards between the RUC and the UDR, this recommendation could not stand alone. The only differences related to the question of very minor convictions. It was not appropriate to have identical standards. Soldiers and policemen performed different roles. Soldiers were always under the control of an NCO, whereas policemen had to act independently. The personal skills needed for a policeman were different and these were often linked to the level of education. The basic question of soundness of character was recognised. On recommendation 62, it had not so far been possible to reach an agreed definition of

paramilitary organisations. Some legal issues were involved and further legal advice was being sought. Recommendation 64 (a security interview of applicants) had been introduced and was now being carried out. Recommendation 65, (the interviewing of applicants' referees), had not been acceptable to the Army because of the scale of resources which would have been required. Referees were interviewed, however, where this appeared necessary.

32. With regard to intelligence documents, much had been already done before Stevens had reported. Intelligence documents were now held under a higher standard of security. Progress with introducing a system for tracing documents such as montages was going well. A system had been introduced whereby block numbers were put on the face of montages to show who had received them. A Chief Inspector at RUC HQ had been nominated to take charge of these arrangements. A continuous weeding process took place on the basis of checks for continued relevance.

33. Mr Collins thanked the Chief Constable for his statement. He hoped that, in the light of the necessary further information being forthcoming, it would be possible to review fully all aspects of the issue before the next conference. He would hope to come back to the next conference, therefore, with a considered position on all aspects of the Stevens Report and its implications.

#### ACCOMPANIMENT

34. Mr Collins said that the Irish had studied the statistical report which they had received last November and had recently handed over a paper in response. In their paper, they had welcomed the fact that regular reports were to be made available. At the same time they stressed the importance of a more detailed breakdown of the statistics being available in order to assess progress, in particular in relation to sensitive Nationalist areas. Ideally, they would prefer to get the breakdown for the rate of accompaniment in each of the RUC's 39 sub-divisions and hoped that this would be possible in future reports. They were particularly concerned about the discrepancy between the figures which had been provided and the reports which they regularly received from their contacts in

Nationalist areas. He proposed, in order to help clarify and facilitate Irish consideration of this aspect, that officials should jointly examine the level of accompaniment in specific selected area such as Coalisland and Downpatrick.

35. In their paper the Irish had also sought further information about the criteria for defining sensitive Nationalist areas, with particular reference to Belfast. The statistics which they had received showed a very high rate of accompaniment there which was difficult to reconcile with reports they received from their contacts. They had also raised again the issue of deployment of the UDR in sensitive Nationalist areas and the general quality of accompaniment. The best way forward might be, when the British side had had time to consider the Irish paper, for officials to hold a further meeting and to pursue joint consideration of the issue along the lines he had proposed. The question could then be addressed at a future Conference.

36. Mr Brooke thanked Mr Collins for the Irish paper, which had only recently been received. Officials would give it close attention and would respond and provide clarification where appropriate. He would have difficulty however in reopening and departing from the basis on which statistics had been given to the Irish. Clarification could be provided where necessary but the basis on which the information was given could not be reopened. The present arrangement was based on judgement of the appropriate response. He hoped that the Irish would agree that the British response since the autumn of 1989 had been good and he wanted to put on record that this reflected an enormous effort by the RUC.

37. Mr Collins replied that the Irish side had studied the November paper carefully. The first set of statistics which had been provided was a useful step towards fulfilling the commitments on accompaniment contained in the 1985 Communique. They had however a genuine problem in squaring the information contained with reports they received about the level of accompaniment and he hoped therefore that we would consider the case for more detailed case studies of particular areas such as those he had mentioned.

Mr Brooke replied that he would not prejudge the outcome of the study of the Irish paper.

NIGHT TIME CLOSURES OF PVCP'S

38. Mr Collins referred to the decision since the last Conference to close a number of checkpoints during the hours of darkness. He recognised the need to take appropriate measures to counter the use of proxy bombs. At the same time, it was necessary to be conscious of the impact of such closures on the local communities on both sides of the border. Both he and Mr Burke had received widespread representations about this as, he was sure, had British Ministers.

39. Mr Brooke said that Mr Collins was right to raise this question. It was essential that a balance be struck between security considerations and economic and social factors.

40. Mr Burke said that strong representations had been received from the local community about the damage caused to social and economic life.

41. Mr Collins said that they had been made aware, in particular, of the distress and fear of many who lived in the Rosslea area of Co. Fermanagh and who were effectively cut off at night when the checkpoints at Killyvilly and Derryard were closed. They had also received strong representations relating to the night closure of the "Camel's Hump" checkpoint between Lifford and Strabane. The closure of this checkpoint had caused a good deal of social and economic disruption, preventing people from catching flights at Dublin Airport, for example. He was grateful for the assurances, through the Secretariat, that the Fermanagh closures, and that at Camel's Hump, did not in fact mean that traffic could not pass. They had been given to understand that barriers could be lifted on request. Unfortunately, however, they were receiving reports from the areas in question that were at variance with this. Local contacts in the Fermanagh area, for example, claimed that there was very often no response from the checkpoints when the barriers were down at night. He would be grateful if the position could be clarified through the Secretariat.

42. Mr Brooke said that in principle the Army was being as flexible as possible in response to requests for opening the barriers. He had seen reports of the number of crossings and the numbers turning away. Those turning away had not necessarily been turned away by the Army. They could have been put off by the length of queues. He had himself been to Rosslea to hear the concerns of the local community directly. There were two sides to the argument. He understood the points of the Nationalist community but Unionists were equally concerned about the issue and attached importance to the need for PVCs which had resulted in a diminution in the number of deaths. He was seeking to be as sensitive and flexible as possible.

43. The Chief Constable said that, in addition to contacting the Army, people could also speak to the RUC to raise difficulties about the closure of crossing points. The RUC did not want to introduce night closures, but it had to be recognised that both Camel's Hump and Rosslea had been attacked in the past twelve months. It was necessary to strike a balance between security and inconvenience. It had been necessary to act quickly, but the security forces would try to respond to legitimate interests. In some cases however, there were only very few movements per night.

44. Mr Collins agreed that it was a question of getting the right balance. Mr Brooke expressed appreciation for Irish understanding and for Garda/RUC cooperation.

#### EMERGENCY PROVISIONS BILL

45. Mr Collins said that they had now received a reply to the paper which they had handed over in November. They would have to consider this. While the Bill was now nearing the end of its committee stage in the Commons, he hoped that it would still be possible to take account of the concerns which the Irish had expressed about aspects of the Bill. One of their recommendations was for prompt and effective handling of complaints against the security forces. They had noted with interest the statement by Dr Mawhinney that he was looking into the introduction of an independent element into the investigation of complaints against the Army. There might well be

an opportunity here, if the new measures were substantive and significant, for making an effective response to a very sensitive and longstanding problem. He also welcomed the indication that the British side were reconsidering Clause 22 relating to the power of the Army to seize documents and were thinking, in particular, of exempting legal documents from the terms of the Bill. This was encouraging but it did not go far enough. The Irish saw a compelling argument for excluding the types of document exempted under the PACE Order, especially confidential papers which would normally be in the possession of doctors, clergymen and journalists. He also remained very concerned about the powers envisaged in Clause 25 for seizure of equipment involved in the reopening of closed border roads. The Irish had also conveyed their concern at the wide scope of Clause 29 on the possession of items intended for terrorist purposes. The potential for abuse seemed very great.

46. Mr Collins said he would like to urge the British side once again to take the opportunity to introduce a well known and widely accepted international safeguard, namely video recording interviews with suspects at the main holding centres. He noted that Mr Brooke had said at the last meeting that he had decided against doing so, but since then the standing Advisory Commission on Human Rights had urged the reconsideration of this decision. He would like to reinforce their view. A positive decision on this issue would be viewed extremely positively by Nationalists in the North.

47. Mr Brooke said he would not respond at length. Dr Mawhinney's point was a statement of Government policy. He himself would be involved at the report stage in the Commons and Lord Belstead would be involved throughout in the House of Lords where all proposed amendments would be debated. He was grateful for the Irish comments on Clause 22. Dr Mawhinney had announced that the British side would be reviewing the provision to see whether greater protection could be given to legal and perhaps other sensitive documents without diminishing the effectiveness of the general power, of whose need we remained convinced. The provisions under Clause 29 would also be the subject of stringent operational instructions on the part of both the police and the Army. On video recording, Mr Brooke

said he had taken the advice of the Chief Constable and had considered the SACHR arguments. He had looked carefully at what could be done but concluded that no change should be made. The Chief Constable said that he had talked to SACHR at length. The logic of their position, if the matter were being considered alone, was strong. But the matter had to be considered in the context of the overall picture. SACHR now had a better understanding of the difficulties of the video recording. There would be serious problems if the tape got into the public domain. It had been put to him that it would reduce accusations of assault. It would however do nothing of the sort. Sinn Fein had a conscious policy of making complaints. If they did not relate to the place of interrogation they would be about treatment elsewhere. Officers in holding centres were, however, instructed to ensure that observation of suspects was continuous.

48. Mr Brooke said that the door was still open for amendment. It was hoped that new provisions would be tabled shortly aimed at paramilitary racketeering. One would empower persons other than policemen to investigate terrorist fraud while the other involved the creation of a new offence of directing the activities of an organisation concerned in the commission of acts of terrorism. Consideration was also being given to the possibility of bringing forward proposals to improve the procedures for confiscating paramilitary assets. The Irish side would be kept informed of developments. Mr Collins wished Mr Brooke every success.

#### EXTRADITION

49. Mr Brooke said that he was grateful for the efforts made by the Irish state to establish helpful case law. He realised that the cases of Sloan, Magee and McKee were to go to appeal but the difficulty in all these cases was precisely that of uncertainty about the breadth of the political offence exception in Irish law which Working Group II had identified in its interim report. The British side continued to believe that this uncertainty was unnecessary and dangerous. It was a fragile hope that the courts could be left to resolve this matter. Only the events in the Gulf had enabled a first class row on this issue to be avoided. It had

therefore been possible for him to take a more moderate line than would otherwise have been the case. It remained the British view however that early Irish legislation to tighten up the 1987 (ECST) Act was the only reliable way forward.

50. Mr Burke said that the upholding of extradition orders in two out of the three cases was the most significant aspect of the judgement. Taking account of the Ellis case, extradition had been upheld in 3 out of the 4 cases in which the 1987 Act had so far been applied by the High Court. On the next steps, Mr Burke said that it was expected that Magee and Sloan would appeal to the Supreme Court. The State would also be appealing certain aspects of the decision. He was confident that Magee and Sloan would not succeed, but was optimistic that the state's appeal would succeed. The outcome of these cases was not, of course, all that could have been hoped for. He would naturally have preferred the High Court's judgement to have been different regarding the political offence exception in so far as it related to the convictions for the possession of firearms. That particular finding would be appealed, so the judgement should not be seen as conclusive. There was much that was positive and helpful in the judgement. In studying it, he hoped that the British side would look at it in its entirety and not simply focus on the possession aspect. The positive aspects included the findings that:

All the other offences involved except possession (murder, attempted murder and unlawful imprisonment) were not political offences by virtue of Section 3 of the 1987 Act; the 1987 Act was not repugnant to the Constitution in defining the political offence exception to exclude certain offences; the 1987 Act was not unconstitutional on the ground that it applied to offences committed before its enactment; there was no probability of ill treatment in the Sloan and Magee cases if they were returned to Northern Ireland; lapse of time was no bar to extradition in the circumstances of these cases; the fact that the Criminal Law (Jurisdiction) Act 1976 had earlier been used in the 3 cases in relation to the offences connected with their escape from Crumlin Road Gaol did not prevent extradition proceedings being taken for their original convictions in Northern Ireland.

51. Mr Burke said that the Irish view remained the same as it had been from the beginning. The 1987 legislation must be given time and a proper opportunity to operate in practice and be fully tested in the courts before any question of amending legislation would arise. To date, there had been two High Court judgements in which the 1987 Act had been tested. In the Ellis case, the judgement, in so far as it related to the 1987 Act, was not appealed to the Supreme Court. The judgement in the present three cases was however, likely to be appealed on a variety of points relating to the 1987 Act. When that happened, the Supreme Court would be considering the scope and application of the 1987 Act for the first time. Cases such as these needed to be fully argued before the Supreme Court before we could be confident about the effect of the 1987 legislation. In those circumstances amending the legislation would be premature. No conclusions about the application of the Act should be drawn before it had been interpreted by the highest court in the land.

52. Mr Brooke said that in both the Sloan and Magee cases the state had not secured extradition on all counts. Mr Burke replied that these points would be appealed by the state. Mr Brooke said he was grateful for that. The British side would wish to return to this subject at a later date.

53. Mr Burke then referred to the practical implications of extradition cases. McKee had spent 8 years in prison. If he had been extradited he would have less than 17 months to serve. Harte had served only 4 days following extradition. Such cases caused difficulty with public opinion.

54. Before Mr Needham and Mr Flynn were invited to join the meeting, tributes were paid to Mr Mathews who was attending his last Conference meeting, Lord Belstead and the new Garda Commissioner were welcomed to their first meeting.

#### ECONOMIC AND SOCIAL AND ENVIRONMENTAL ISSUES

55. Mr Collins welcomed Mr Flynn and Mr Needham to the Conference noting that they were the third set of departmental Ministers to

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attend Conference meetings. This showed the success of efforts to widen the Conference's consideration of economic and social issues affecting both parts of Ireland.

56. Mr Flynn said that he and Mr Needham had had a useful meeting and had shared views on a number of areas. They had discussed the location of a single waste incinerator for the island, the need for which had been recognised for some years. It was important that it should comply with EC standards on the disposal of waste, notably the principles of proximity and self sufficiency. There was only room for one incinerator in the island of Ireland. Discussion had taken place with Du Pont and in the light of these the Republic of Ireland was prepared to put its own proposal on hold pending further study of whether it would be possible to cooperate with Du Pont.

57. On road improvement, Mr Flynn said improvements to the Belfast/Rosslare route had been discussed. Considerable expenditure would be necessary on both sides of the border.

58. On environmental issues generally, agreement had been reached on setting up a working group between their two Departments on the disposal of sewage sludge.

59. Mr Flynn said that tourism had also been discussed, particularly in the light of Dublin's year as the Cultural Capital of Europe and Belfast 1991. It was important to encourage movement between the two parts of the island.

60. Mr Needham said that Mr Flynn had summarised their discussions well. They had spent much time on the politics of the incinerator. It was important that Ireland had one and that its location was environmentally acceptable. It was important for them to work closely together. They should not say too much in public at this stage beyond saying that the matter was being considered. On roads, Mr Needham said that it was of vital importance to improve the A1 route on both sides of the border. Considerable expenditure had already been made in the North. There was now a need for improvement South of the border, particularly if the 73% of the people of the Republic who had never been to Northern Ireland were

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to be encouraged to do so. On tourism generally, they had had a useful and interesting exchange of views which he would like to continue.

61. Mr Collins welcomed the progress made and asked the Ministers to keep the Conference informed of future developments. Officials would agree suitable passages for the communique. Mr Collins said that the Conference took note of the progress on transport and that there was now an agreed programme on tourism.

62. Mr Needham said he had discussed tourism with Mr Brennan. It would be worth giving a fuller report perhaps after 6 months. In reply to Mr Collins' question about the Northern Ireland Tourist Board office in Dublin, Mr Needham said this had made a good start. He wished to encourage more Republic of Ireland tourists to visit Northern Ireland and he was spending as much money in Dublin as in the whole of Great Britain. He welcomed the encouragement which Mr Brooke and Mr Collins had given.

#### ENERGY

63. Mr Collins referred to progress on energy and asked about the position on the gas pipeline in view of the approaching April deadline. Mr Needham said that there was no doubt that the gas pipeline was of great importance and had become a high priority particularly now that domestic gas in Northern Ireland had become a possibility.

64. Mr Collins asked about the electricity interconnector. Mr Needham said that the British side were looking at small interconnectors as a means of assisting supplies. Some existed which had not previously been known about. The main issue remained the restoration of the large interconnector and pressure from the Conference on this would be helpful.

#### INTER REG

65. Mr Collins said that he understood that good progress was being made in advance of the February deadline.

TOPICS FOR FUTURE CONFERENCES

66. After a brief discussion, Mr Brooke and Mr Collins agreed that health matters should be taken at the next Conference and the rural development aspects of agriculture at the one after that, provided the Irish were ready.

CROSS BORDER SHOPPING

67. Mr Collins said that this was no longer a problem. Mr Brooke replied that he hoped that this was the case. Mr Collins said he was aware that Mrs Shepherd (DTI) had written to the Minister of Finance on this subject last week. Mr Reynolds had replied. (Copies of Mr Reynolds' reply were handed over.) Mr Reynolds was in correspondence with the Commission to sort out the remaining details regarding the derogation. He would keep up the pressure to ensure that the new regulations came into effect without further delay.

FAIR EMPLOYMENT

68. Mr Collins said that he remained concerned at the present situation whereby an individual who believed that he or she may be the victim of discrimination in employment did not have access to the information necessary to pursue a case before the Fair Employment Tribunal. The Irish side believed strongly that this situation tended to undermine the credibility of the Fair Employment Legislation. Because of these concerns he was anxious that any amendment to the 1989 Act should ensure a complainant had access to all relevant information necessary to pursue a case before the tribunal. The situation whereby an amendment of the 1989 Act could again be open to legal challenge, thereby causing further delays, should be avoided. It was the Irish view that a simple repeal of Section 30 of the Act would be the best manner in which to proceed.

69. Mr Needham said that the British side shared these sentiments, but it was necessary to be clear about the guarantees of confidentiality regarding information given by individuals and companies. There was no point in having legislation if it was not possible to get the evidence to court. Proposals would be published

in February and were likely to involve repeal of Section 30 and specifying under Section 28 which issues should still be subject to confidentiality. The Fair Employment Tribunal would be given the right to override regulations on confidentiality where they considered this necessary. He felt that this met the case. It had been discussed with the Commission who agreed, on first sight that this seemed to resolve the problem. The British were determined to succeed, were determined to get fair employment and were anxious to see off the McBride campaign and prevent it continuing to do damage to inward investment in Northern Ireland.

70. Mr Collins said he was encouraged by the urgency with which the British side were pursuing this issue.

#### BIRMINGHAM SIX

71. Mr Collins said that he appreciated that this issue was sub judice and that the British side would not be able to say much about the case. He wished only to say that the Irish side were disappointed that the Director of Public Prosecutions had decided to contest the case and that an opportunity had been missed at the hearing before Christmas to bring this longstanding 17 year tragedy to an end. He would also appreciate it if the Irish side could be informed, perhaps through the Embassy in London, whether the report of the Devon and Cornwall police into the case had yet been finalised. As the case was due for preliminary hearing on 7 February, and the substantive appeal started on 28 February, it would seem essential that the report be completed at the earliest possible date. Finally he would appreciate it if, as in the past, the court authorities would be good enough to facilitate the Irish Ambassador, and also the many members of the Dail and Seanad who would be attending the hearing.

72. Mr Brooke said that he would refer matters to the Home Secretary where relevant, even though this was not a subject which fell within the provisions of the Agreement.

DATE OF NEXT CONFERENCE

73. It was agreed that the next conference should take place on Thursday 7 March beginning with a late lunch. The meeting concluded at 2030.

JOINT STATEMENT

Ministers then considered the draft joint statement. After discussion of various amendments, a final version was agreed, and this is attached at Annex A.

JEC/17

## JOINT STATEMENT

### ANGLO-IRISH INTERGOVERNMENTAL CONFERENCE

DUBLIN, 31 JANUARY 1991

A meeting of the Intergovernmental Conference was held in Dublin on 31 January 1991. The British Government was represented by the Joint Chairman, the Right Honourable Peter Brooke MP, Secretary of State for Northern Ireland accompanied by the Right Honourable the Lord Belstead, Paymaster General and Deputy Secretary of State. The Irish Government was represented by the Joint Chairman, Mr Gerard Collins TD, Minister for Foreign Affairs, and accompanied by Mr Raphael Burke, Minister for Justice and Communications. The Northern Ireland Minister with responsibility for the Environment, Mr Richard Needham MP, and the Minister for the Environment, Mr Pdraig Flynn TD, joined the Conference for a discussion of environment issues. The Chief Constable of the RUC and the Commissioner of the Garda Siochana were present for discussion on security matters.

2. The Conference reviewed the outcome of talks with the main constitutional parties in Northern Ireland since the last Conference and both sides reaffirmed their commitment to the value of substantive political talks embracing the three sets of relationships. Both sides considered that the gap between the participants had diminished. The Conference noted that further exchanges with the political parties would now take place in the hope of resolving the outstanding issues.

3. Ministers reaffirmed their condemnation of all forms of terrorist activity. They condemned in particular the futility of recent fire bombing attacks in Belfast of which the ultimate victims are the whole community and particularly those with jobs in the firms involved.

4. Both sides re-emphasised their determination to work together to enhance the present very high level of security co-operation and considered a number of specific measures to this end.

5. The Irish side raised the recent shooting incident at Cullyhanna and complaints of harassment in that area. They also raised the general question of the use of lethal force by the Northern Ireland security forces and proposed a thorough examination of this question, including the investigative process and the adequacy of existing law. The British side re-emphasised the procedures to which all members of the security forces have to conform. They drew attention to the inquiries being carried out by the RUC into the Cullyhanna incident and expressed total confidence in the impartiality of these inquiries. Both sides called on anyone with relevant information to co-operate with the inquiry and hoped that the inquiry would be promptly concluded.

6. The Conference received a further report from the Chief Constable of the RUC on the implementation of the recommendations made by Mr Stevens following his inquiry into allegations of collusion between members of the security forces and Loyalist paramilitaries. The Irish side indicated that they wished to consider the progress made to date in this matter and to respond at the next Conference.

7. Following the consideration at the last Conference of a report on police accompaniment of the armed forces (including the UDR), the Irish side drew attention to proposals made through the Secretariat for the further improvement of reports to the Conference in this area. The British side indicated that these proposals would receive careful and prompt consideration. The Conference reaffirmed the objective that, save in the most exceptional circumstances, there should be a police presence in all operations which involve direct contact with the community.

8. British Ministers noted that a comprehensive reply had recently been presented on a series of detailed points raised by the Irish side about the Northern Ireland (Emergency Provisions) Bill. The Irish side raised a number of matters including the question of complaints against the armed forces and difficulties which arise in the proposed power of the armed forces to examine and seize documents. The Irish side also urged that the opportunity should be taken to introduce the safeguard of video recording of interviews

with suspects. The British side gave information on the progress of the Bill to date and agreed to give further thought to the matters raised by the Irish side.

9. The Conference discussed the measures affecting Permanent Vehicle Checkpoints taken by the British authorities in border areas in the aftermath of the series of attacks on such checkpoints last autumn, and considered complaints received about the night-time closure of certain of these checkpoints. The British side drew attention to the efforts being made by the security forces to operate the new arrangements as flexibly as the security situation allows. It was agreed that this matter will be the subject of ongoing discussion in the Secretariat.

10. The Conference discussed arrangements for dealing with fugitive offenders and noted recent decisions of the Irish High Court which are subject to appeal to the Supreme Court. The British side expressed concern about the possible consequences of continuing uncertainty about the scope of the political offence exception in Irish Extradition Law. The Irish side pointed that the interpretation of the law in this regard was in the process of being clarified by the Courts.

11. In accordance with the commitment in the Review Document to widen Ministerial participation in the Conference and to encourage more structured discussion of a greater range of issues of common interest to both parts of Ireland, Mr Padraig Flynn TD, Minister for the Environment and the Northern Ireland Minister with responsibility for the Environment, Mr Richard Needham MP, joined the Conference for a discussion on environment issues. Among the topics upon which Ministers exchanged views were Hazardous Waste Disposal, Road Improvements and the Management of Water Resources.

12. Ministers received Joint Progress Reports on Tourism, Transport and Energy issues which have been discussed at recent Conferences with the participation of the Ministers concerned. They noted progress on the joint examination of the cost and benefits of improving the Belfast-Dublin Rail Link; the proposals now drawn up for developing new tourism business through the joint efforts of

Bord Failte and the Northern Ireland Tourist Board; and the continued co-operation in the consideration of gas and electricity interconnections and energy efficiency. The Conference also received a joint progress report on the development of proposals for a joint submission to be made shortly to the European Commission under the Inter-Reg initiative.

13. Ministers agreed that at the next meeting of the Conference, there would be consideration of the development of common interests in the provision of health care.

14. British Ministers expressed the hope that the Irish Government would take early steps to bring in agreed measures to liberalise Customs restrictions on visitors from the South staying less than 48 hours in Northern Ireland. The Irish side noted the agreement that had been reached with the European Community since the last Conference and indicated that this agreement would be implemented as soon as certain technical details were agreed with the European Commission.

15. British Ministers briefed Irish Ministers on the responses received to the recent consultative document considering means of remedying, in legislation amending the Fair Employment Act, problems arising out of a recent decision by the Fair Employment Tribunal on disclosure of information. They would be giving further consideration to these responses and also to the views and proposals on remedial action expressed by the Irish side.

16. The Minister for Foreign Affairs referred to recent developments in connection with the appeal of the Birmingham Six which has been arranged to begin shortly. In response to the Minister's remarks, the Secretary of State pointed out that this case remained a matter for the Courts and not for Government.