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SECRET AND PERSONALNORTHERN IRELAND

Taoiseach,

At yesterday's meeting of the negotiating group the discussion concerned -

- (1) Secretariat/[Commission];
- (2) Devolution;
- (3) Convention/Courts;
- (4) The press summary;
- (5) Title of an agreement;
- (6) Timetable, including U.S. etc. implications;
- (7) Judicial challenge;
- (8) Fund: Legal forms;
- (9) U.D.R;
- (10) Policing.

Messrs. Dorr, Lillis, Goodall, Mallaby and Brennan met separately after the meeting to make more succinct the list of possible media questions and answers in the event of an agreement.

1. SECRETARIAT/[COMMISSION]

The idea seems to be accepted that once an agreement is signed secretaries will be designated on each side who can then come together, with the assistance of other agreed personnel, to discuss, under the auspices of the Steering Committee actual arrangements for the first meeting, including agenda, accommodation, form of records and decisions etc. The Northern Ireland office are considering the accommodation to be provided. On present thoughts, this will include accommodation for the Irish Secretariat, the British Secretariat and a common area, all within the precincts of Stormont. Temporary living accommodation would be provided. Robert Andrew has agreed to a visit by Sean Donlon sometime within the next week or so to look over the proposed arrangements. The British side stress that a decision as to whether the members of the Secretariat would remain there all the time should wait until the first meeting - more or less to see how the

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situation develops. They stress the approach, with which I agree, that the [Commission] should be the decision making body and that the Secretariat, while having important powers, should be "sold" as the creature of the [Commission]. They say that, as things stand now, the Secretariat is becoming the focus of antagonism in the North. This is a highly undesirable development.

They agree that representatives of the Foreign Office would be included in the Secretariat - whose functions would be -

- (1) Agenda and arrangements for meetings;
- (2) Communications as between the interests involved, on areas of difficulty;
- (3) Resolution of differences, insofar as this can be achieved at official level.

On the [Commission], they have enquired as to our thoughts on permanent membership. As you know the agreement provides that the [Commission] shall meet at ministerial or official level, as required. Membership is to be small and flexible. The idea appears to be emerging that the first meeting should be substantially attended, with representatives from both sides to deal with -

- (1) its future programme of work; and
- (2) political, security, legal, economic, social and cultural aspects.

Such full attendance, so far as we are concerned, would provide a reasonable background for the first meeting, for some time, between the Garda Commissioner and the Chief Constable.

Robert Andrew is particularly concerned that he should act in the capacity of Principal Adviser to the Secretary of State, and, as such, be in a position to contact his opposite number(?) on the Irish side. There is agreement that the present Steering Committee should continue to operate, for a transitional period, so as to ease the new arrangements into being.

DEVOLUTION

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~~WR~~ raised again the question of whether the British were working on Devolution Plans - of which we were unaware. Robert Andrew said that with the Unionists in their present mood Devolution just was not on. However,

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since the Assembly will, under current legislation, end in October 1986, plans must soon be devised for its continuance, modification or abolition, in the context possibly of devolution. This would be one of the subjects to be discussed at early meetings of the [Commission].

CONVENTION/COURTS

We explained again the background to the change on Irish attitudes to the Convention. We said that the ideal matching arrangement would be the system of mixed courts referred to in the agreement. Failing this, some other measures on the Courts system, of real substance were necessary. We could not specify at the moment what exactly these should be but they should be such as to increase public confidence in the Judiciary. . . Three man courts could be a move in this direction; also moves on the composition of the courts so as to ensure a better representation of the minority; perhaps arrangements so as to ensure that the allocation of cases in matters both of first instance and of appeal were not done by the same person; possibly something to fix a reasonable maximum on the number of defendants who might be tried at the same time in the same court; consideration of remand periods etc. I explored, privately, with Goodall what precisely the Foreign and Commonwealth Secretary had in mind when he referred to, what I took to be, a cross border appellate system. Mr. Goodall was not sure but saw no reason for not feeding this suggestion into the system also. Against this background the text of the draft communique, as it now stands, on the subject of the Convention etc. reads:

"The two Governments envisage that the meetings and agenda of the [Commission] will not normally be announced. But they wish it to be known that, at its first meeting, the [Commission] will consider its future programme of work in all the fields - political, security, legal, economic, social and cultural - which come within its competence. It will concentrate in the first instance on:

- relations between the security forces and the minority community in Northern Ireland;
- seeking measures which would give substantial expression to the aim of ensuring that there is public confidence in the administration of justice; and
- ways of improving security cooperation between the two Governments.

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In the interests of all the people of Northern Ireland the two sides look for early progress in these matters.

Against this background, the Taoiseach said that it was the intention of his Government to accede as soon as possible to the European Convention on the Suppression of Terrorism."

PRESS RELEASE

The British side reiterated the view expressed in the Prime Ministers letter that a Press Release could cause problems, through people trying to find differences between agreement text and press release text. We said that this was not a matter on which anyone was prepared to go to the stake. The whole question is, at present in abeyance.

TITLE OF AN AGREEMENT

If an agreement is reached, its title could, on present views, be "Anglo-Irish Agreement, 1985".

TIMETABLE, INCLUDING U.S. IMPLICATIONS

I will speak separately to you on this.

JUDICIAL CHALLENGE

The British side say that there is now a strong possibility that Unionists will attempt to challenge an agreement judicially. They do not know the grounds but surmise that, in one instance, it could be based on the Act of Union, and its effect in making Ireland (including Northern Ireland), an integral part of the United Kingdom, which an international agreement could not modify. Another line of attack could possibly be that the British Government cannot enter an international agreement which purports to Better the Secretary of State's discretion under Statute Legislation, to do certain things. One way or another, they say that they will act on the assumption that acts of the British Government are legal unless specifically declared illegal by the Courts. They do, however, have some hesitation on the way in which legal challenge could affect the Speaker's decision in a Commons debate. They cannot say in advance what this would be, but think that he would probably say that the sub-judice rule would be interpreted as applying only in relation to criminal proceedings.

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FUND

Thought is to be given by Declan Quigley and his opposite number to the legal form of a trust deed setting up a fund.

U.D.R.

We emphasised, again, the importance attached by the Irish Government to changes in this area, in particular, the need for visible measures of redeployment in sensitive areas. The British are, again, to give us a non-paper setting out what they propose in relation to the U.D.R.

POLICING

The British asked, in return, for a paper on Irish proposals in relation to Border Policing - which have already been described, in confidence, by Mr. Ward, to Armstrong, Andrew and Stevens.

TEXT

In article 1(a) of the Agreement the word "only" has been transposed so as to match the 1980 communique, precisely.

In article 2 the words "concerned with relations between both parts of Ireland" has been inserted in sub-paragraph (a) before the words "to deal".

|| In sub-paragraph (b) of article 2, the British want the words "decisions and" inserted before the word "administration" in the second last line.

In article 3 the British want the sentence "a permanent secretariat shall be established by the two Governments" to read "a secretariat shall be established by the two Governments to service the Committee in the discharge of its functions as set out in this agreement".

We see no objection to the words proposed to be added to the article but we do not agree to the deletion of the word "permanent".

In article 7, the word "[e.g. parades and processions] have been deleted, on the understanding that ministerial comment at the time of an agreement can indicate that this is the sort of subject which would come up for consideration ~~that~~ the article.

The word "shall be a framework" are substituted for "shall constitute a framework" where the latter words occur in the agreement.

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NEXT MEETING

Tentative arrangements have been made for a further official meeting in London on Sunday and Monday next.

AJ

9 October, 1985.

c.c. Tanaiste,
Minister for Foreign Affairs,
Minister for Justice,
Attorney General
Ambassador Dorr,
Messrs. Ward, Donlon, Lillis and Quigley.