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B.07002

PRIME MINISTER

c Sir Robert Armstrong

Anglo-Irish Relations: Northern Ireland  
Meeting of OD(I), 4.30 p.m. 23 May

OD(I) will be discussing the Cabinet Secretary's Note (OD(I)(85)3) about the stage reached in the exploratory talks between British and Irish officials. Attached to that Note is an amended version of the text for a British proposal approved by OD(I) on 24 April.

2. This amended text contains two particular improvements from our point of view:

(a) Section II about the status of Northern Ireland deals with this subject in the form of an undertaking by the British and Irish Governments, whereas the equivalent passage in the communique on your meeting with Dr FitzGerald at Chequers in November 1984 was in the form of individual statements by the two Governments. Dr FitzGerald recognised in the Chequers communique that any change in the constitutional status of Northern Ireland would only come about with the consent of the majority. That point is repeated in Section II of the amended text, but in binding form. It would be good to get the Irish to put their name to point 2 of this Section, which notes that the present wish of the majority of the population is for no change in the status of Northern Ireland, a point which was made only in your name in the Chequers communique. Point 3 of this Section - about what would happen if a majority in Northern Ireland





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did in future want a united Ireland - reflects the language which made this point in your name in the Chequers communique. The Irish delegation in the talks have not seen the exact language of Section II but have seemed in discussion to be willing to accept something of this kind. The question whether this provision would accord with the Irish Constitution, which lays claim to all of Ireland, is one for the Irish Government; their delegation in the talks foresees no problems.

(b) Section I of the amended text contains a total rejection by both Governments of terrorism and those who support it.

3. The main questions for discussion at OD(I) are likely to be the following:

(i) Paragraph 11 of the amended text: Should the Irish be given the opportunity of putting forward views on proposals for legislation and on major policy issues?  
Paragraph 11 at present provides that "the Committee would constitute a framework within which the Irish Government could put forward views on proposals for legislation on Northern Ireland matters, and on major policy issues within the responsibility of the Secretary of State for Northern Ireland, significantly affecting the interests of the minority community." This seems to concede little or nothing to the Irish, since proposals for legislation and major policy issues are likely to become publicly known before decisions are taken, and there is nothing to stop the Irish Government putting forward views on them. The text as it stands may,



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however, be thought to sound too sweeping. The Northern Ireland Secretary may suggest that the provision be limited by speaking of "proposals for major legislation". Yet this could cause future argument with the Irish Government about whether a particular piece of intended legislation was "major" or not. An alternative might be to speak of "...views on Proposals for Orders in Council concerning Northern Ireland, and on major policy issues concerning 'transferred matters' within the responsibility of the Secretary of State". The present procedure is that the Proposals for Orders in Council are published in advance. After an interval, usually about two months, during which the Northern Ireland Assembly and others may comment, the draft Order in Council is laid before Parliament in Westminster for enacting under the affirmative procedure. These Orders in Council concern what are known as "transferred" matters, i.e. matters like transport, industrial development and agriculture, which would be transferred to a devolved administration, if one were established, and under direct rule (the situation covered by paragraph 11) are administered by the specialist Departments in Northern Ireland under the Secretary of State. "Transferred" matters are distinct under the legislation from "excepted matters" and "reserved matters", which are the responsibility of Westminster and would remain so if there was devolution; these include foreign affairs, defence and constitutional matters and law and order. The effect of referring to Orders in Council and "transferred matters" in any Anglo-Irish agreement would thus narrow greatly the range of legislation and policy on which the Irish Government could put forward views.





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(ii) Joint courts

The Irish Government attach great importance to this difficult subject. The very least we might be able to persuade them to accept is the British formula in paragraph 17 of the amended text. The right tactic now may be to press them to accept this, and for officials to refer to Ministers again if the Irish cannot be persuaded.

(iii) The title of the new Anglo-Irish Committee

In the British proposal given to the Irish on 21 January, the new body was given no title but was described as "a joint body". In their response of 13 February, the Irish called it "a Co-ordinating Committee". We then suggested "a Standing Committee". The Irish now want to call it "a Standing Joint Committee". If this formula is thought, despite the background, to smack of joint authority, officials might be instructed to try out "a Committee on North/South Matters". If the Irish would not accept this, officials might try "an Anglo-Irish Standing Committee" which, being a mere statement of fact, might be difficult for the Irish to resist.

(iv) Review mechanism

The Northern Ireland Secretary may suggest that provision be made in any agreement for a mechanism under which its terms could be kept under review and either party could withdraw. The Foreign and Commonwealth Secretary believes that this would weaken the sense of assurance which we hope the unionists will derive from Section II about the status of Northern Ireland. It is normal for international agreements to contain some provision for termination or extension after a stated period, and this might provide a way of meeting the Northern Ireland Secretary's point.





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(v) Joint Secretariat in Belfast

The Northern Ireland Secretary may suggest that the provision in paragraph 5 of the amended text for "a small joint secretariat in Belfast, within which the Irish Government would maintain an office" would upset the unionists. The idea of a joint secretariat in Belfast appeared in the British proposal of 21 January and the subsequent Irish and British texts. A flat proposal to remove it would therefore be most unlikely to be acceptable to the Irish. But OD(I) could instruct officials to explore whether the Irish would be willing to remove it or tone it down.

HANDLING

4. At the start of the meeting, you may wish to ask the Secretary of the Cabinet to introduce his Note briefly. You could call on the Foreign and Commonwealth Secretary to speak next, and then the Northern Ireland Secretary. You could then focus discussion on the question of paragraph 11 of the amended text and the question of joint courts. During discussion, the Northern Ireland Secretary may wish to say how he proposes to fulfil the mandate he received from OD(I) on 24 April to take soundings, after the Northern Ireland district elections on 15 May, of the leaders of both communities about their likely reactions to an Anglo-Irish agreement.

CONCLUSIONS

5. Subject to the discussion, you might guide the Sub-Committee to -

(a) authorise the handing over of the amended text to the Irish delegation in the exploratory talks;





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(b) invite the Northern Ireland Secretary to report to the Sub-Committee on his soundings of both communities.

6. You will wish to consider whether to report on this matter to Cabinet at its meeting on 6 June. Officials could supply a speaking note taking into account the discussion in OD(I).

C L G Mallaby

22 May 1985