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AN RÚNAÍOCHT ANGLA-ÉIREANNACH

BÉALFEIRSTE

ANGLO-IRISH SECRETARIAT

BELFAST

MOS

Mr. Mc

*Mr. Mc Carthy C.C.
2.9.88*

26/8

22 August 1988

Mr. Dermot Gallagher
Assistant Secretary
Anglo-Irish Division
Department of Foreign Affairs.

*P.S. Jaonseach
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Mr. Nally
Mr. Matfews
P.S.S.
Mr. Gallagher (on return).
Counsellor A.I.
Ambassador, London.*

BRIEFING ON REVIEW OF THE WORKING OF THE AGREEMENT

Dear Assistant Secretary,

The British have been holding a number of internal meetings in the past few weeks on the Review of the working of the Anglo-Irish Agreement, as provided for in Article 11. I was asked to attend a meeting in the NIO in London on Friday evening, 20 August, to be briefed on preliminary British thinking on the Review. The briefing was conducted by the Assistant Secretary in charge of Intergovernmental Conference issues, Mr. Peter Bell. He was accompanied by the British Deputy Joint Secretary, Mr. Robin Masefield. The discussion took place over a period of four hours and, while the Review was the main issue, we covered a number of other areas for which Bell was accompanied by David Kirk, Assistant Secretary in charge of the Constitutional, Law and Political Division of the NIO and by the Principal in charge of Intergovernmental Conference issues, Mr. Stephen Leach. Matters other than the Review are reported on separately.

Bell began by saying that British officials had very little guidance from Ministers in relation to the Review and the conversation was, therefore, purely personal and informal. They had, nevertheless, moved on a little since the conversation between Joint Secretaries O hUiginn and Miles reported on by Mr. O hUiginn in his minute of 2 August 1988. I

made clear that I had no instructions or guidance from my authorities and that I would report back on the basis that the briefing represented preliminary thinking at British official level, at this stage. Bell began by reading from what he called "an internal background and personal memo" prepared by him for the Secretary of State. He allowed me to take detailed notes of his summary reading of this memo and the language in the following paragraphs is Bell's language and phrasing for the most part.

The Preliminary British View

The Secretary of State is inclined to the view that one interpretation of Article 11 (and this seems to be the one he favours) is that the Review begins on 15 November 1988, and, it could, if that were acceptable to both sides for political reasons, last for "as long as everyone wants it to". The British side tend to the view that, given the possibility of unforeseeable developments between now and the Autumn, it would be premature to seek to reach final agreement before November on the precise ambit and procedures of the Review. It would be unprofitable also, they feel, to try and anticipate the substantive conclusions of the Review. Nevertheless, they feel that, since a precondition of success will be a shared understanding of the methods and purposes of the Review, it would be desirable for both sides to follow up the brief discussion on the issue, at the meeting of the Intergovernmental Conference on 27 July, with a further and preliminary exchange of views as to how it might be conducted.

Overall British Thinking

The British attitude, at this stage, is to concentrate on the fact that Article 11 refers to a "review of the working of the Conference to see whether any changes in the scope and nature of its activities are desirable'. This they interpret to mean that the Review does not, to quote Bell, "put in question the

Agreement itself to which both Governments have recently publicly reaffirmed their total commitment, nor does it put in question any of the Articles- or the wording of these Articles". In that context, Bell broke off from his reading of his background note to add that every possible text for an Anglo-Irish Agreement had been gone through during the negotiations and it would, he said, be unproductive to begin "to tear up the Ark of the Covenant". The British were, however, purely from their own point of view, conscious of the dangers of a minimalist approach. Looked at exclusively in British political terms, such an approach would run up against what Bell called "the Ivor Stanbrook problem". Stanbrook and other backbenchers could use a minimalist approach to attack the British Government in such terms, as Bell put it, such as "is everything hunky-dorey on security cooperation, extradition working perfectly and a decrease in violence etc?". That, apart from what views we might have, could be a factor in the background militating against a purely minimalist approach. They had not yet decided how to avoid such a minimalist approach without getting into substantive change in the provisions of the Agreement.

It is clear, however, that the British side do not at present have it in mind to propose any major change either in the scope or nature of the activities of the Conference. Their attitude is that they remain committed to the broad policy objectives - as set out in the Preamble - for which the Agreement was concluded. They consider that the essence of the Review should be forward-looking, and concentrate on ways in which the Conference should continue to discharge its functions under the terms of the Agreement as set out most notably in Articles 2, 3 and 4. It was not, at this stage, their intention to carry out an exhaustive review of the measures taken by the British Government in areas which fall within the purview of the Agreement.

It was clear also that the British are anxious to ensure that Unionists cannot complain, this time around, that they were not

consulted (see commentary below for further elaboration on this point).

The above being said, the British feel that the Review presents an important opportunity for the two Governments to:

- (i) investigate whether the machinery of the Conference could operate more effectively in fulfilling the purposes for which it was established;
- (ii) review the working of the Conference to date;
- (iii) possibly also to "consider the implications for the Conference of any continued inability to achieve and sustain devolution on a basis which secures wide acceptance in Northern Ireland".

Possible Issues for Consideration

While the British side do not envisage both sides addressing the substantive issues of the Review until later in the Autumn, they do, however, see advantage in remitting to officials the preliminary consideration of a range of procedural issues on which they might report back to a suitable meeting of the Intergovernmental Conference.

They felt that the issues to be considered in this context might include the following:

- (i) the ambit of the Review under Article 11, since the scope and nature of the activities of the Conference, referred to in that article, are imprecise;
- (ii) areas for possible examination by the Review. These might, for example, include procedural changes in the working of the Conference (and Secretariat) as well as the methods of handling programmes of work and areas of

concern to the Conference mentioned in the Agreement. One might also consider the extent of the Conference's influence in particular fields or the implications of devolution for the working of the Conference;

- (iii) the conduct of the Review, having regard to the need to be seen not to exclude Northern Ireland constitutional parties from the Review;
- (iv) the timing of the Review;
- (v) the form of the product of the Review;
- (vi) the promulgation of the results of the Review;
- (vii) other matters, including the possibility of further reviews.

Other Matters

Bell emphasised the importance their side attached to a common line in response to Parliamentary and media questioning in relation to progress on the Review. They were nervous of arousing fears or expectations in either jurisdiction about the Review. Their suggestion would be that both sides should respond that it would be premature to comment on the scope or timing of the Review and that it should be emphasised that Article 11 spoke of a Review of the workings of the Conference and not of the Agreement as a whole.

Summary of British Preliminary Thinking

In general, the British side take the view that it is premature to address the substantive issues of an Article 11 Review. They seem to place very strong emphasis on the fact that political developments, especially in Northern Ireland, between now and the Autumn could have implications for the conduct of

the Review. I had the clear impression that, taking their thinking as at present, the British do not think that the Review will be the occasion for significant changes to the working of the Conference. Nevertheless, they feel a certain amount of "fine tuning" might need to be done and that, following the brief exchanges at the July meeting of the Intergovernmental Conference, it seemed appropriate that officials should begin a preliminary consideration of the procedural questions likely to be involved, and to establish a Review Team for that purpose. The idea is that such a Review Team would report back to the Conference for guidance from Ministers.

Comment

In general, the British wish to keep their options open and, in particular, are inclined to stress the point that possible political developments in Northern Ireland between now and the Autumn could have implications for the conduct of the Review. Nevertheless, I feel that they are sceptical about the real likelihood of any such political developments and that there is, accordingly, a barely subconscious strand to their thinking which will tend to lead them, ultimately, towards a minimalist approach to the Review. A major preoccupation seems to be the desire to keep the Unionists "in play", so to speak. It is clear also, I think, that the British view at the moment is not to open the Review procedure in any formal way until 15 November and to take what might be described as a "free-wheeling" approach as to how long it should take and to the exact nature of it. This again, I surmise, would be to give the Unionists further time to consider making a political move.

I emphasised in reply to Bell's presentation that, since I had no instructions, he had not, as he phrased the question; "shocked" me. It was, I said, undeniable that the scenario he had outlined was one possible way of approaching the Review. It seemed to me equally self-evident that, if there were a real

possibility of political movement, it would be desirable to take such action as was possible (e.g. the idea of beginning the substantive Review on 15-November, with a possible further period before the procedure closed) to encourage it. The Irish side, I said, also had a strong interest in political movement and the British would be aware of the Taoiseach's personal interest in such a development.

Speaking personally, I said that I could not help but feel that there were considerable dangers in any flexible and/or open-ended approach. It was essential that any attempt to reassure Unionists did not lead to downplaying the Agreement. It was also important that the idea of providing "space" for Unionists to engage in political movement did not result in a situation which, in practice, gave them not only a veto on political progress generally, but also on the achievement of a substantial Review. We would, I said, need to be extremely careful about ensuring that Unionists did not get the impression that they could prevent a substantial Review.

Bell replied that we need have no fears on the point I had mentioned. The Prime Minister was "not prepared to trade the Agreement for the goodwill of Unionists". He added that there was the further consideration in the Prime Minister's mind that she regarded Molyneux and Paisley as people who "ratted on her". He went on to explain that, at the meeting in Downing Street in March 1986 between the Prime Minister and Molyneux and Paisley, Mrs. Thatcher felt that she had made an agreement with them and that they "abrogated" the agreement on their return to Belfast. What the British would envisage is consultation with all the constitutional political parties. That being said, they were anxious, as a minimum, to ensure that Unionists "could not make political capital out of not being consulted" in relation to the Review. They were equally conscious that many Unionists felt that "they" (the Unionists) had shown "a lot of lead" and felt that "the British owed them some kind of helpful response".

In exploring British thinking on a number of issues, it was clear that they are pessimistic about the prospects for devolution within any reasonable time-frame, but it remains, nevertheless, their fundamental political objective in Northern Ireland and in relation, especially, to the Agreement. I also had the impression, in exploring a phrase used by Bell, that a serious deterioration in the security situation could create a political climate in Britain which would be inimical to any substantive Review which went towards expanding the "Nationalist" Agenda. [Note: The phrase in question was "political developments, especially in Northern Ireland, between now and the Autumn, could have implications for the conduct of the Review". I was interested in the implication that political developments other than those in Northern Ireland seemed to be envisaged. It is possible that it was a loose phrase and that I made too much of it. However, combined with the "Ivor Stanbrook problem", as Bell put it, I saw it as having slightly ominous implications in that there was a hint that any indepth Review would steer the British towards the area of security cooperation.]

I also raised a personal concern about the fact that the absence of a substantial Review could leave us with a very "slim" Agenda for the future working of the Agreement. In many senses, the specific Agenda of the Conference (Articles 5 to 10) had been pushed forward or, more often in practice, we had come to a point e.g. Diplock Courts, Irish Language etc., where the British had refused to proceed any further. If this were to continue - as could be the case if the Review did not identify some new areas of action or give a new impetus to the existing Agenda - we would find ourselves with a Conference waiting around for devolution or some other political development to happen. This seemed to me undesirable and dangerous politically. I also expressed some concern about the point made by Bell, namely, that the British Government did not intend to carry out an exhaustive review of measures taken in

areas which fall within the purview of the Agreement. This seemed to tie us to the existing Agenda in a very inflexible way. Bell said, he noted the point. Their thinking was preliminary but one of their ideas was to avoid providing us with a list of British achievements under the Agreement and to avoid having each side shouting at the other about issues which were sensitive (Extradition on their side and Diplock Courts on ours). In reality, this attitude will have the effect of resisting any attempt to expand the Nationalist Agenda.

I pointed out also that it was a political fact - and the media had to be taken into account - that significant developments were expected by a considerable number of people from the Review. I was not, I said, arguing that we could not get round this problem, if there were clear political reasons for doing so, but it was unlikely to be disposed of simply by attempting to dampen peoples' expectations via the media line suggested by the British.

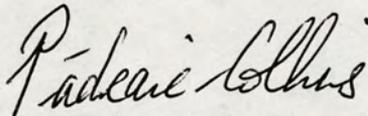
British thinking on the proposed Review Team of officials was that the remit should be seen as proceeding from the last meeting of the Intergovernmental Conference and should, therefore, be seen as preliminary and low-key. It should, in the initial stages, be confined to the Secretariat, since the whole range of issues to be examined impinged on the role of the Secretariat. It would be necessary, at a later stage, when Ministers on both sides had given guidance, to have the participation of other officials. It was possible that an existing group of senior officials could be used, or, it might be that Ministers would wish to do it some other way. We would have to await Ministerial instructions on this point.

In summary, there are a number of considerations, both of a political and security nature which seem to be steering the British towards a low-key review of Article 11. Nevertheless, nothing is set in concrete, and a Prime Minister/ Taoiseach summit, for example, is not ruled out if there were sufficient

justification for a meeting at that level. Present thinking among British officials, however, seems to be dubious about the possibility of a review having sufficient "meat" for such a high-level meeting. The British want to keep their options open for a little longer, but want officials to do some preliminary work on procedural issues for consideration by Ministers at "a suitable" meeting of the Conference (September/October?). They seem to feel that such a course is the one favoured at political level in their administration and that they are unlikely to receive any more specific political direction until well into the Autumn.

I undertook to report back to my authorities, stressing the unofficial and personal nature of our exchange.

Yours sincerely,



Padraic Collins