

R C MASEFIELD

11 JANUARY 1989

RM/4466/89/JEC



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COMMENTS ON THE PRELIMINARY IRISH SUBMISSION ON THE ARTICLE 11 REVIEW

I was commissioned at yesterday's Steering Group meeting to circulate urgently draft comments which might be taken as Second Reading points with the Irish on their preliminary submission on the Article 11 Review (circulated by Principal Secretariat on 6 January).

2. The first 5 paragraphs of their paper deal with the general approach to the Review; paragraphs 6 and 7 propose structures on which we have already had discussions with the Irish, with the rest of the paper setting out Irish comments on points in Articles 2-10 that they would wish to see coming out of the Review.

3. The annex contains points that we might make, with the more important ones set out in the first section. We have already told the Irish how helpful their paper was, and we need to move fast if we are to register our criticism on an overall basis, though we can of course make the individual observations in the context of our exchanges on each Article.

4. I should be glad to receive comments from copy recipients by noon on Friday, 13 January.

(Signed)

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## COMMENTS ON THE PRELIMINARY IRISH SUBMISSION ON THE ARTICLE 11 REVIEW

PRIMARY POINTS

1. In para 2 it is asserted that "the core questions are: has the central thrust of the Agreement been respected? Has the balance of the text been matched by a balance in implementation?".

On the face of it, this assertion, which we would not accept without challenge, goes beyond the scope of the Review which concerns the working of the Conference to see whether any changes in the scope and nature of its activities are desirable. Moreover it neglects the emphasis which both sides agreed should be placed in the Review on a positive programme for the future.

2. "The phenomenon at which the Agreement was primarily directed was that of nationalist alienation," (para 4).

We would not accept this without qualification. As important objectives, at least for the British side, were the promotion of a lasting political settlement in Northern Ireland, the reassurance to Unionists of formal recognition of the constitutional status of Northern Ireland, and enhanced cross-border relationships. It is therefore a false premise to suggest that the success of the Agreement must be judged on the extent to which the concerns of the nationalist community have been met.

3. The Irish analysis of Articles 2-10 is both selective and draws too strongly on recent events; for example

(a) No credit is given for measures taken earlier in the Agreement such as the Public Order Legislation, the changes made to the Emergency Provisions Acts, the changes to the complaints machinery, and the (unattributed) decisions relating to Divis, Unity and Rossville Flats;

(b) There is no reference to the important subjects of extradition and extraterritorial jurisdiction;

(c) The passage on cross-border co-operation is a complacent snapshot of the current picture ignoring the long periods when the Garda relationship with the RUC was not satisfactory, and the continuing British requests for specific improvements to cross-border co-operation.

4. Paragraph 17 (dealing with Article 6), and to a lesser extent paragraph 16 (Bill of Rights) suggest that the Review itself should have a policy-making role. This cannot be within the scope of Article 11; the Review is rather to identify issues for future consideration.

MORE MINOR POINTS

5. Paragraph 6 sets out an elaborate sub committee structure. As the Irish side will already know, the British side will operate a core group supplemented by officials who have expertise in the particular issues under the individual Articles. We would not agree to a joint public description of working groups on this basis.

6. The paper omits reference to Article 1. We could note that the present Irish administration has not spoken of the binding nature of this Article in such a specific way as did its predecessor.

7. In paragraph 8 the Irish rightly recognise that in many areas there has been a good response to their views. In paragraph 9 however they fail to appreciate that for some decisions and measures, particularly those taken in response to a current security threat, there is

- (a) a need for speed of response,
- (b) a requirement for confidentiality,
- (c) parliamentary privilege to be considered.

These are real constraints on our ability to expound options to the Irish and await their comments.

8. The Irish assert in para 9 that the British side has failed to attribute achievements and decisions to the Conference. However this ignores statements such as those in the Bridgewater and Oxford speeches by the Secretary of State. Moreover, the absence of specific attribution is one thing, but "frequent dissociation of the Conference from positive developments" is not a valid description of our position.

9. Paragraph 12 omits reference to other regular contacts between officials including the Quadripartite group and the Confidence group.

10. Article 4(b) states that the Irish Government supports devolution. Statements from the Irish Government, reflected in paragraph 14, resile from that position.

11. Irish comments on progress under Article 7 are very selective. There is no recognition of the security background in paragraph 18, including the extensive searching in the Republic in November 1987 and the atrocities in Northern Ireland in 1988.

12. The paper asserts, and we have never been provided with chapter and verse by the Irish side despite repeated requests, that they have received "a highly unsatisfactory response rate" to complaints about harassment. The Secretariat is not to operate as a complaints bureau, and in the absence of specific information we cannot judge the validity of their claim.

13. The Irish comments on Article 7 contain no reference to the continuing discussions of the Confidence group and the progress that has been made in this area in the last 3 years.

14. The Irish ignore Article 7(d) and the excellent service we have provided on prison matters. Moreover there is no recognition of Ministers' decisions for reviews of SOSP and special category cases.

15. Again the section on Article 8 pays no credit to earlier actions such as the speeding up of remand hearings.

16. Throughout the paper there is no recognition of the obligation, certainly in the spirit if not the letter of the Agreement, on the Irish side to consult and notify the British side. Examples of failures are the announcement of the McAnespie enquiry and the Irish decision on duty-free allowances.

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4. The Irish assert in para 7 that the British side has failed to attribute achievements and credit to the Conference. However this ignores statements made by the Secretary of State and other speeches by the Secretary of State. However, the absence of specific attribution is not a valid dissociation of the Conference from possible achievements. It is a valid dissociation of our position.

9. Paragraph 12 refers to the regular contact between officials including the two judicial groups and the Conference group.

10. Article 4(b) states that the Irish Government supports denunciation. Statement 10 of the Agreement, reflected in paragraph 14, states that the British Government...

11. Irish comments on paragraphs 10 and 11 are very selective. There is no mention of the fact that in paragraph 11, including the reference to the meeting in November 1987 and the statement in paragraph 10...

12. The paper provides that the British side was provided with chapter and verse by the Irish side. It is stated that they have received a copy of the "Complaints" about paragraph 12 of the Agreement. It is stated as a complaint however, that the British side has not responded to the request for a copy of the "Complaints"...

14. The Irish comment on the progress of progress to the Conference is that the British side has not responded to the progress that has been made in the area of the Agreement...